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 PETITIONER

Oral Argument Requested

TEAM NO. 7
Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether the 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 v. Hendrickson* eliminates the requirement for a pretrial detainee to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim for a violation of the pretrial detainee's Fourteenth Amendment Due Process rights in a 42 U.S.C. § 1983 action.

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CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. U.S. Const. amend. VIII.

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, §3.

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).

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. 42 U.S.C. § 1983.

STATEMENT OF THE CASE

I. Statement of the Case

A. Background

The Geeky Binders, led by Thomas Shelby, are a street gang that have historically had significant power in the town of Marshall. R. at 3. In the last few years, the Geeky Binders lost control of Marshall to their rival gang, the Bonuccis. R. at 3. The Bonuccis' leader, Luca Bonucci, along with several other members of the Bonucci clan, were recently admitted to the Marshall jail on charges of assault and armed robbery. R. at 3.

Arthur Shelby ("Shelby"), Thomas Shelby's brother, is the second-in-command of the Geeky Binders. R. at 2. Shelby has had several run-ins with the law as a member of the Geeky Binders, including arrests and subsequent convictions for crimes such as drug distribution and possession, assault, and brandishing a firearm. R. at 3. Consequently, Shelby was in and out of prison for the last several years. R. at 3. During his most recent detention, Shelby commenced three separate civil actions under 42 U.S.C. § 1983 as a prisoner against prison officials, state officials, and the United States. R. at 3. However, these three actions would have called into question either his conviction or his sentence, and were dismissed without prejudice pursuant to *Heck v. Humphrey*. R. at 3.

Later, on December 31, 2020, Shelby was arrested on charges of battery, assault, and possession of a firearm by a convicted felon following a police raid. R. at 3-4. Officers subsequently held Shelby at the Marshall jail. R. at 4. During his intake, Shelby made several comments to the booking officer, stating: "The cops can't arrest a Geeky Binder!" and "My brother Tom will get me out of here, just you wait." R. at 4. Shelby also had several belongings

with him during intake, including a custom-made ballpoint pen with an awl concealed inside and "Geeky Binders" engraved on the outside. R. at 4.

These comments and belongings were noted in Shelby's file. R. at 4-5. Shelby's file was uploaded to the jail's online database. R. at 5. The online database contains a file for each inmate that lists the inmate's charges, inventoried items, medications, gang affiliation, and other pertinent statistics and data that jail officials would need to know. R. at 5. Shelby's gang affiliation was not identified in his personal file and was found only by opening a new, separate file. R. at 4-5.

After Shelby was placed in a holding cell separate from the main area of the jail, gang intelligence officers reviewed and edited Shelby's file on the online database. R. at 5. The intelligence officers discussed the current tensions between the Geeky Binders and the Bonuccis, as Thomas Shelby had recently murdered Luca Bonucci's wife. R. at 5. The Bonuccis sought revenge on the Geeky Binders and identified Arthur Shelby as a prime target for the gang. R. at 5. The intelligence officers included this information in a special note in Shelby's file and printed out paper notices to be left at the administrative areas in the jail. R. at 5. Shelby's status was also included on the rosters and floor cards at the jail. R. at 5.

Additionally, the intelligence officers held a meeting with jail officials the morning after Shelby was booked, notifying each officer of Shelby's presence in the jail. R. at 5. At the meeting, the intelligence officers told the other officers where Shelby would be housed (cell block A) and where the Bonucci gang was housed (cell blocks B and C). R. at 5. Intelligence officers concluded the meeting by reminding the attending officers to check the rosters and floor cards regularly to ensure that the rival gangs were not coming into contact in common spaces in the jail. R. at 5.

B. January 8, 2021

On January 8, 2021, Officer Chester Campbell ("Officer Campbell"), an entry-level guard at the jail, oversaw the transfer of inmates to and from the jail's recreation room. R. at 6. It is unknown if Officer Campbell attended the meeting hosted by the gang intelligence officers on January 1. R. at 5-6. Roll call records from the meeting indicated Officer Campbell attended, but the jail's time sheets reflected that Officer Campbell had called in sick that morning and did not arrive at work until later that afternoon after the meeting. R. at 5-6. Typically, any officer absent from the meeting is required to review the meeting minutes on the jail's online database. R. at 6. However, the record of who viewed the meeting minutes was wiped due to a glitch in the system. R. at 6.

While working on January 8, Officer Campbell escorted Shelby to the jail's recreation room. R. at 6. At the time, Officer Campbell did not know or recognize Shelby. R. at 6. Before moving Shelby, Officer Campbell did not reference the hard copy list of inmates with special statuses or the jail's database. R. at 6. During the transfer, Officer Campbell led Shelby to the guard stand to wait for other inmates to be gathered for recreation. R. at 6. During the walk, another inmate yelled out to Shelby, saying: "I'm glad your brother Tom finally took care of that horrible woman" to which Shelby responded that it was "deserved." R. at 6. Officer Campbell told Shelby to be quiet as he collected another inmate from cell block A. R. at 6.

Next, Officer Campbell retrieved two inmates from cell block B and one inmate from cell block C. R. at 7. All three inmates were members of the Bonucci clan. R. at 6. Though Shelby moved behind the other inmate from cell block A, the Bonuccis immediately charged Shelby and beat him with their fists and a homemade club. R. at 6. Officer Campbell attempted to break up the attack but was outnumbered by the three men. R. at 6. The attack lasted for several minutes until other officers could assist Officer Campbell. R. at 6. Shelby was injured from the attack,

sustaining head wounds, rib fractures, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding. R. at 6.

II. Procedural History

On February 24, 2022, Shelby filed his 42 U.S.C. §1983 action pro se against Officer Campbell in his individual capacity. R. at 7. Shelby filed a motion to proceed in forma pauperis. R. at 7. On April 20, 2022, the District Court denied the motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g) as Shelby had accrued three strikes under the Prison Litigation Reform Act ("PLRA"). R. at 7. In forma pauperis is the permission given to a person to sue without payment of court fees on claim of indigence or poverty.[1] The District Court directed Shelby to pay the $402 filing fee before proceeding which Shelby paid within the thirty-day deadline. R. at 13.

In Shelby's initial complaint, he alleged Officer Campbell violated his constitutional rights by failing to protect him against the attack. R. at 7. Shelby was a pretrial detainee at the time of the attack. R. at 7. Further, Shelby alleged he was entitled to damages under 42 U.S.C § 1983. R. at 8. On May 4, 2022, Officer Campbell filed a Motion to Dismiss arguing Shelby failed to state a claim. R. at 8. On July 14, 2022, the District Court granted Officer Campbell's 12(b)(6) Motion to Dismiss. R. at 13. The District Court held Shelby failed to allege sufficient facts suggesting that Officer Campbell had actual knowledge of Shelby's gang affiliation and the resulting risk of bodily harm. R. at 13.

[1] The Offices of the United States Attorneys, *Legal Terms* Glossary, DEPARTMENT OF JUSTICE, https://www.justice.gov/usao/justice-101/glossary#:~:text=in%20forma%20pauperis%20%2D%20In%20the,claim%20of%20indigence%20or%20poverty (last visited Feb. 2, 2024).

On July 25, 2022, Shelby filed a timely appeal. R. at 13. On August 1, 2022, the Appeals Court of the Fourteenth Circuit appointed Shelby counsel. R. at 13. Shelby appealed to the District Court's denial of the motion to proceed in forma pauperis, stating that a dismissal pursuant to *Heck v. Humphrey* does not constitute a "strike" under the PLRA. R. at 13. Moreover, Shelby appealed the dismissal for failure to state a claim, arguing that the lower court erred by not applying the objective standard established in *Kingsley v Hendrickson*. R. at 13. Shelby argued the court erred in applying the subjective deliberate indifference standard to the failure-to-protect claim. R. at 13. On December 1, 2022, the Appellate Court reversed and remanded the District Court's decision on both issues. R. at 19.

In October 2023, the Supreme Court of the United States granted the Petitioner for certiorari to the Fourteenth Circuit Court of Appeals filed by Officer Campbell. R. at 21.

SUMMARY OF THE ARGUMEMT

This Court should reverse the appellate court's decision and find in favor of Officer Campbell on both issues. Shelby has accumulated three strikes under § 1915(g) of the PLRA with meritless § 1983 claims and must pay the $402.00 filing fee. Furthermore, Officer Campbell did not have any subjective intent in Shelby's failure-to-protect claim, and thus did not violate Shelby's Fourteenth Amendment Due Process rights.

First, Shelby's previous dismissals under *Heck v. Humphrey* constitute strikes pursuant to 28 U.S.C. § 1915(g) because *Heck*-dismissals are categorically frivolous and fail to state a claim. Under § 1915(g) of the PLRA, a strike is accumulated when a complaint is dismissed on the grounds that it was frivolous, malicious, or fails to state a claim. A *Heck*-barred claim is dismissed both because it fails to state a claim and because it is frivolous.

Heck dismissals are based on the favorable termination of a case, which is an essential element of a prisoner's civil claim for damages in § 1983 cases. Failure to allege an element of a claim constitutes failure to state a claim in § 1915(g). As failing to state this element would bar a prisoner from the relief sought, failure to dismiss in the context of the PLRA is not considered an affirmative defense. Given Shelby's *Heck*-barred cases were unactionable and failed to state a claim, Shelby has accumulated three strikes and is no longer eligible to file in forma pauperis.

Further, the PLRA and the strike system established in § 1915(g) were created with the intention of barring frivolous cases that cannot be tried before a court. Cases are dismissed under *Heck* because they are premature and unactionable, as they would invalidate the prisoner's underlying conviction or sentence. As such, said cases are unable to be tried and waste the court's time with meritless claims. Shelby's claims were dismissed for their prematurity consumed the court's time despite being knowingly unactionable. This is the type of frivolous claim that the PLRA intended to prevent. Allowing Shelby to continue filing without consequence undermines the PLRA and the efficiency of the courts.

Second, the decision in *Kingsley v. Hendrickson* does not eliminate the requirement for a pretrial detainee to prove a defendant's subjective intent in a failure-to-protect claim for a violation of the pretrial detainee's Fourteenth Amendment Due Process rights in a 42 U.S.C. § 1983 claim. *Kingsley* does not apply beyond the limited scope of excessive use of force claims. This Court specifically declined to apply their ruling beyond excessive use of force claims, thus doing so now would be against the spirit of the case and time-honored jurisprudence.

Given the *Kingsley* standard is not applicable, the objective standard established in *Farmer v. Brennan* remains the standard for deliberate indifference failure-to-protect cases. *Farmer* is the flagship case on deliberate indifference and was not overturned by the ruling in

Kingsley. In fact, this Court did not mention nor imply *Farmer* in the *Kingsley* decision. The subjective deliberate indifference standard is the proper standard to be applied in this case. An officer must have subjective, actual knowledge of the risk to the inmate's safety to be held liable in deliberate indifference claims such as failure-to-protect claims. A prison official is deliberately indifferent to a substantial risk of serious harm to an inmate only if the official was subjectively aware of the risk. Since Officer Campbell did not have actual knowledge of Shelby's gang affiliation, he did not have the requisite intent under the subjective test.

Finally, while the Fourteenth Amendment protects pretrial detainees against any punishment, it does not protect against mistakes or mere negligence. Negligence is below the threshold of a Due Process Claim under the Fourteenth Amendment. Officer Campbell did not intentionally place Shelby with the Bonucci members as a punishment. Officer Campbell had neither actual knowledge of the risk of the harm nor the intent to harm Shelby. Rather, Officer Campbell mistakenly failed to protect Shelby against the attack by the Bonucci members without intent. Office Campbell's action, at most, can be construed as negligent. Regardless, negligence is below the threshold of the Fourteenth Amendment. Therefore, Shelby does not have a claim under the Fourteenth Amendment Due Process Clause. This Court should reverse the appellate court's decision to reverse the district court decision in favor of Arthur Shelby on both counts and uphold the decision of the district court.

ARGUMEMT

This Court reviews the appellate court's reversal of the trial court's judgment de novo, reviewing the legal questions at issue without deference to the lower courts. *United States v. King-Vassel,* 728 F.32 707, 711 (7th Cir. 2013). This Court gives a plenary review of the lower court's decision and is willing to substitute it with its own judgment. *Id.* at 711.

I. Shelby's previous dismissals under *Heck v. Humphrey* constitute "strikes" pursuant to 28 U.S.C. § 1915(g).

Congress enacted the PLRA in 1995 to address the large number of prisoner complaints filed in federal courts. *Blair-Bey v. Quick*, 151 F.3d 1036, 1040 (D.C. Cir. 1998). Among other reforms, the PLRA mandates early judicial screening of prisoner complaints to prevent frivolous lawsuits from congesting the courts. *Jones v. Block*, 549 U.S. 199, 204 (2007). As codified in 28 U.S.C. § 1915(g), each lawsuit or appeal that is "dismissed on the grounds that it was frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger" counts as a strike. 28 U.S.C. § 1915(g). After collecting three strikes, the petitioner cannot file another lawsuit in forma pauperis, and must pay the full court filing fee up-front. 28 U.S.C. § 1915(g). A strike is merited regardless of whether the previous dismissals were made with or without prejudice. *Lomax v. Ortiz-Marquez*, 140 S.Ct. 1721, 1727 (2020).

This Court in *Heck v. Humphrey* discussed premature dismissals, clarifying when a prisoner can bring a § 1983 civil rights lawsuit. The Court held that a cause of action under § 1983 challenging the constitutionality of a conviction or sentence does not develop until the underlying 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." *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Allowing such lawsuits would undermine the established principle that a conviction or sentence cannot be questioned by a civil lawsuit, and instead can only be done by an appeal or other appropriate procedures. *Id.* at 484. This concept is also referred to as "favorable termination." *Id.* at 492. Therefore, the district courts must dismiss without prejudice any § 1983 claim brought before a conviction or sentence has been invalidated. *Id.* at 489-90.

The facts and case law demonstrate that Shelby's three *Heck* dismissals failed to state a claim and were frivolous, constituting strikes under the PLRA. Accordingly, Shelby has reached his three-strike limit imposed under § 1915(g) and cannot proceed in forma pauperis. Therefore, Shelby is required to pay the imposed $402.00 court filing fee.

A. *Heck* dismissals constitute a failure to state a claim because favorable termination of a case is an element of a prisoner's civil claim for damages.

The first grounds for dismissal of a PLRA strike is for failure to state a claim. 28 U.S.C. § 1915(g). Under Federal Rules of Civil Procedure Rule 12(b)(6)'s failure-to-state-a-claim standard, a court may dismiss a claim based on a dispositive issue of law without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one. *Neitzke v. Williams*, 490 U.S. 319, 319 (1989) (interpreting Fed. R. Civ. P. 12(b)(6)). Failure to state a claim in the context of the PLRA is synonymous to lacking a cause of action in *Heck*. *Garrett v. Murphy*, 17 F.4th 419, 427 (3d Cir. 2021); *see also McDonough v. Smith*, 139 S.Ct. 2149, 2158 (2019) (interpreting *Heck*'s favorable-termination requirement as necessary to bring a "complete and present cause of action.").

Heck dismissals are based on the favorable termination of a case, which is an "essential element of a prisoner's civil claim for damages" in § 1983 cases. *Smith v. Veterans Admin.*, 636 F.3d 1306, 1312 (10th Cir. 2011); *see also Heck*, 512 U.S. at 484 (finding that favorable termination is a necessary element of a malicious prosecution claim). Failure to allege this essential element of a § 1983 claim constitutes failure to state a claim. *Smith*, 636 F.3d at 1312. Further, the dismissal opinion does not need to include the words "dismissed for failure to state a claim" to be considered as such. *Garrett*, 17 F.4th at 432-33; *Byrd v. Shannon*, 715 F.3d 117, 126 (3d Cir. 2013). Therefore, as held by the Third, Fifth, Tenth, and D.C. Circuits, a civil suit that would invalidate the underlying criminal charge and undermine procedure is dismissed under

Heck because it lacks an actionable cause and fails to state a claim. *Byrd*, 715 F.3d at 126; *Garrett*, 17 F.4th at 427; *Smith*, 636 F.3d at 1311-12; *In re Jones*, 652 F.3d 36, 38 (D.C. Cir. 2011).

While the Ninth Circuit found alternatively and ruled that *Heck* dismissals are not automatically strikes, they also acknowledged instances when such dismissals are strikes. The Ninth Circuit in *Washington v. Los Angeles* held that a *Heck* dismissal "may constitute a PLRA strike for failure to state a claim when *Heck*'s bar to relief is obvious from the face of the complaint, and the entirety of the complaint is dismissed for a qualifying reason under the PLRA." *Washington v. L.A. Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1055 (9th Cir. 2016). In a subsequent Ninth Circuit ruling, the court elaborated that lacking favorable termination presents an obvious bar to relief, constituting a strike. *Ray v. Lara*, 31 F.4th 692, 697 (9th Cir. 2022). The court in *Ray* explained that *Heck*'s bar to relief is obvious from the face of a complaint when a civil suit seeks to invalidate the underlying conviction or sentence and the court dismisses the entire complaint for this reason. *Id.* This reasoning holds even when a complaint does not explicitly mention the status of the conviction. *Id.*

Therefore, under even the Ninth Circuit's interpretation of *Heck*, if a claim does not have favorable termination, it cannot proceed and fails to state a claim. Shelby's *Heck*-barred claims all lacked favorable termination, and thus failed to state a claim, constituting three strikes under § 1915(g).

i. *Heck's* favorable-termination requirement is not an affirmative defense.

Moreover, *Heck*'s favorable-termination requirement is not an affirmative-defense because it is a required element. The Ninth Circuit found alternatively and held that because favorable termination may be waived by the defendant, it is an affirmative defense. *Washington*,

833 F.3d at 1056. The court analogized compliance with *Heck* to the mandatory exhaustion requirement of PLRA claims, which they found constituted an affirmative defense, not a pleading requirement. *Id*. However, the exhaustion requirement refers to a process of exhausting administrative remedies. 42 U.S.C. § 1997(e)(A). This Court has defined administrative remedies as involving the "prison grievance process," meaning services provided by the correctional facility, not a process involving the courts. *Jones*, 549 U.S. at 201. Examples of administrative remedies include resolving the problem orally, submitting a grievance form to the correctional facility, and appealing to the correctional facility. *Id.* at 207.

Comparing filing a grievance with corrections officers to filing a complaint in federal court is inappropriate and misconstrues Congress's intent in including the exhaustion requirement in the PLRA. Congress's intent was to "reduce the quantity and improve the quality of prisoner suits" and "afford corrections officials an opportunity to address complaints internally before allowing the initiation of a federal case." *Porter v. Nussle*, 534 U.S. 516, 516-17 (2002). Though both exist for efficiency purposes, they occur at different steps in the litigation process and invoke different actions. The exhaustion requirement occurs pre-filing and requires the petitioner to complete administrative measures within their jail before filing a claim. 42 U.S.C. § 1997(e)(A). Whereas a *Heck* dismissal occurs during litigation and is not about a failure to act but a failure to file an actionable claim. *Heck*, 512 U.S. at 484. One relates to the challenge of one's conviction whereas the other relates to resolving issues within the prison system. To rely on this analogy to categorize failure to state a claim under § 1915(g) as an affirmative defense is to conflate complaining and litigating.

Moreover, nothing in *Heck* requires that the defendant first plead the validity of the conviction in an answer. *Garrett*, 17 F.4th at 484. Rather, *Heck* states that a favorable-

termination requirement is a necessary element of the claim for relief under § 1983. *Id.* While *Heck* is also not a jurisdictional bar, a challenge to sentencing or conviction is actionable by a writ of habeas corpus. *Colvin v. LeBlanc*, 2 F.4th 494, 499 (5th Cir. 2021). A § 1983 damages action predicated on these matters is barred by *Heck* because success on that claim would necessarily invalidate the duration of his incarceration. *Id.*

Accordingly, failure to state a claim under § 1915(g) is not an affirmative defense and is a bar to relief that may be granted. Therefore, the dismissal of a civil rights suit for damages based on prematurity under *Heck* is for failure to state a claim, and Shelby's *Heck* dismissals should be considered the same.

ii. Shelby's *Heck* dismissals failed to state a claim.

Shelby's prior civil actions under *Heck* constitute strikes within the meaning of the PLRA because they failed to state a claim. 28 U.S.C. § 1915(g). Shelby commenced three separate § 1983 civil actions, each dismissed without prejudice pursuant to *Heck*. R. at 3. These three actions called into question his conviction or his sentence, and thus would not have been actionable claims at the time. *Id.*; *see Colvin*, 2 F.4th at 496, 498 (determining that because Colvin's claims challenged the validity and duration of his detention, these were barred by *Heck* and characterized as a failure to state a claim). While there is no explanation in the record for why these cases were dismissed under *Heck*, *Heck* dismissals indicate with "sufficient clarity" that the complaints were dismissed as premature for failure to state a claim. *See Smith*, 636 F.3d at 1312 (holding that while there was no reasoning explained for the previous dismissals, all *Heck* dismissals are premature and therefore unactionable claims, constituting a PLRA strike for failure to state a claim).

Courts have routinely characterized a *Heck* dismissal as one for failure to state a claim – and Shelby's claims are no different. *Colvin*, 2 F.4th at 498. This does not require knowledge of Shelby's prior claims and the exact grounds for their dismissal, as any *Heck* dismissal inherently fails to state a claim. *See Smith*, 636 F.3d 1306 at 1312 (holding that a premature dismissal under *Heck* is a dismissal for failure to state a claim and is a strike under the PLRA). Rather, it only requires knowledge of whether Shelby's claims were dismissed, and whether the original convictions or sentences were favorably terminated (reversed, expunged, invalidated, or impugned by a grant of a writ of habeas corpus). *See Heck*, 512 U.S. at 484, 489 (stating favorable termination is an element that must be alleged and proved in a case such as a malicious prosecution action); *see also In re Jones*, 652 F.3d at 38 (finding that even though the petitioner's conviction was subsequently reversed, that did not alter the holding that his *Heck* dismissals failed to state a claim and constituted a strike). Unless there is favorable termination, the plaintiff has not alleged sufficient facts "to provide the grounds of his entitle[ment] to relief." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). As Shelby's convictions and sentences have remained the same, Shelby failed to meet *Heck*'s favorable-termination requirement and failed to state a claim under the PLRA. *Garrett*, 17 F.4th at 427.

In reviewing Shelby's former claims, the Fourteenth Circuit relied upon the Ninth Circuit's decision in *Washington* without considering how the subsequent decision in *Ray* expanded upon the *Washington* decision. While the Ninth Circuit does not consider *Heck* dismissals to automatically constitute failures to state a claim, they acknowledge that it is possible if the pleadings present an "obvious bar to securing relief." *Washington*, 833 F.3d at 1055-56. As found in *Ray*, should the court dismiss the entire complaint for failing to state a claim, then that presents an obvious bar to securing relief. *Ray*, 31 F.4th at 697. Unlike

Washington, where the court declined to consider the dismissals as a strike because the actions were intertwined with a habeas challenge, Shelby's *Heck* dismissals were purely civil actions. R. at 3; *Washington*, 833 F.3d at 1057. Rather, Shelby presented three premature claims that could not be tried by the court, lacking a cause of action. R. at 3; *see generally Heck*, 512 U.S. at 499. Therefore, Shelby's claims presented an obvious bar to relief and failed to state a claim, earning PLRA strikes. *Ray*, 31 F.4th at 697.

B. *Heck* dismissals constitute frivolous filings.

The second reason for dismissal of a PLRA strike is for a frivolous claim. Frivolous means to lack an arguable basis in either law or fact. *Washington*, 833 F.3d at 1055; *Netizke*, 490 U.S. at 325. A complaint is legally frivolous if it is premised on an "indisputably meritless legal theory." *Neitzke*, 490 U.S. at 327. The PLRA was intentionally designed to curb meritless, frivolous claims that were congesting the court system. *In re Jones*, 652 F.3d at 38. Barring frivolous claims prevents merited claims from being "submerge[d] and effectively preclude[d]." *Neitzke*, 490 U.S. at 327 (citing *Jones*, 549 U.S. at 204).

As this Court has observed with respect to its own docket, "[e]very paper filed with the Clerk no matter how repetitious or frivolous, requires some portion of the institution's limited resources." *In re McDonald*, 489 U.S. 180, 184 (1989) (per curiam). Reviewing each complaint, frivolous or not, requires the clerk's office to docket the action and the court to screen the cases under the PLRA and consider any preliminary motions that plaintiff chooses to bring, such as a motion for preliminary relief. *See, e.g., In re Martin-Trigona*, 795 F.2d 9, 11 (2d Cir. 1986) (per curiam) (noting that review of a prisoner's application for in forma pauperis status often "is no easy task.").

A *Heck*—barred § 1983 claim is legally frivolous unless the conviction or sentence at issue has been reversed, expunged, or invalidated. *Hamilton v. Lyons*, 74 F.3d 99, 102 (5th Cir. 1996). If the action must be dismissed because the issue has not been favorably terminated, then it is legally meritless, and ultimately, frivolous. *Patton v. Jefferson Correctional Center*, 136 F.3d 458, 463, n. 6 (5th Cir. 1998). *Heck* dismissals are based on prematurity and are thus avoidable and obvious in nature. *Davis v. Kansas Dep't of Corr.*, 507 F.3d 1246, 1249 (10th Cir. 2007). Courts routinely dismiss *Heck*-barred suits as frivolous, as done by the district court in this case. *Id.*; *see e.g., Kastner v. Texas*, 332 F. App'x 980, 981 (5th Cir. 2009). Additionally, courts often view complaints which fail to state a claim as also being frivolous, extending the reasoning for failure to state a claim to frivolous cases. *Smith*, 636 F.3d at 1313-14.

i. Shelby's *Heck* dismissals were frivolous.

Shelby's § 1983 *Heck* dismissals were filed prematurely and wasted the court's time on frivolous, unactionable claims. As the Fourteenth Circuit noted, *Heck* dismissals were a form of "judicial traffic control." R. at 15; *Washington*, 833 F.3d at 1056. If this is judicial traffic control, then Shelby has congested the courts three times. R. at 3. Since Shelby's three prior claims "fall[] squarely within the *Heck* holding," they are inherently frivolous under § 1915(g). *Davis*, 507 F. 3d at 1249 (holding that *Heck*—barred claims are based on indisputably meritless legal theory and are frivolous under § 1915(g)).

Though the record is silent as to the reasoning behind Shelby's dismissals, an official finding of frivolousness is not necessary so long as it more closely parallels such a conclusion than it does a determination of non-frivolousness. *Patton*, 136 F.3d at 464 (upholding the magistrate judge's decision that a § 1983 action questioning his conviction was frivolous and subsequently dismissed under *Heck*). Shelby has not shown that his previous convictions or

sentences have been reversed, expunged, invalidated, or called into question. *Hamilton*, 74 F.3d at 102. Therefore, Shelby's *Heck*-barred claims were legally frivolous and are strikes under § 1915(g). *Id.*; *Davis*, 507 F.3d at 1249; *Patton*, 136 F.3d at 463.

ii. Shelby's *Heck*-barred claims are what Congress intended to deter with the PLRA.

Allowing for three unactionable claims to consume the court's time is frivolous and exemplifies what the PLRA strike system is meant to regulate. Congress's intent in drafting the PLRA was to help both courts and prisoners by decongesting the docket, allowing for faster case review and ensuring that merited claims are not overlooked. *Neitzke*, 490 U.S. at 327. The PLRA does not bar prisoners from making complaints, it instead incentivizes an efficient approach to this litigation.

Prisoner litigation continues to "account for an outside share of filings" in federal district courts. *Jones,* 549 U.S. at 203 (citing *Woodford v. Ngo*, 548 U.S. 81, 94 n.4 (2006)). In 2023, prisoner's complaints challenging prison conditions or claiming civil rights violations accounted for ten percent of all civil cases filed in federal courts.[2] Totaling over 30,000 cases, prisoner's complaints consume a significant amount of the court's time, merited or not:

> Most of these cases have no merit; many are frivolous. Our legal system, however, remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law. The challenge lies in ensuring that the flood of nonmeritous claims does not submerge and effectively preclude consideration of the allegations with merit.
> *Id.* (citing *Neitzke*, 490 U.S. at 327).

Given the PLRA has existed for almost twenty years, prisoners are aware of the *Heck* bar. Prison litigants who continue to present meritless cases are consuming valuable court resources.

[2] Administrative Office of the United States Courts, *Judicial Facts and Figures*, Tables 4.4, 4.6 (Sept. 30, 2023), https://www.uscourts.gov/statistics-reports/judicial-facts-and-figures-2023.

One of the leading manuals for prisoners prominently cautions: "Do NOT Use Section 1983 to Challenge Your Original Criminal Conviction, Your Sentence, Loss of Good Time, or Denial of Parole."[3] Other manuals go further and advise they file a writ of habeas corpus because this is the "only way" they can challenge their sentence.[4] In addition to warnings in manuals, prisoners also receive warnings through the strikes themselves. Prisoners are allotted three strikes before they must pay the court filing fee. After the third, prisoners should know a challenge to their sentence or conviction is no longer permitted through a civil challenge.

Shelby ignored the direction from the court and filed three charges serving the same purpose: challenging his sentence or conviction. R. at 3. Enforcing the filing fee for Shelby's disregard for the law will set a precedent for other prisoner's considering wasting the court's and their fellow inmate's time with their frivolous claims. Even more, setting this precedent will create consistency throughout the lower courts, enabling prisoners to undoubtedly know when they accrue a strike and then file similar claims with caution.

Setting such a precedent would prioritize not only the efficiency of the courts, but the effectiveness of claims. *Heck* dismissals are not jurisdictional bars and thus do not deny prisoners their ability to file a merited claim. *Colvin*, 2 F.4th at 498. Enforcing the strike system for *Heck*-barred frivolous claims allows prisoners to continue exercising their rights while dissuading those who abuse that right. Shelby used the court's time on frivolous claims that could not be tried, and which Shelby reasonably should have known would not prevail. Each of these claims is thus frivolous under the § 1915(g). Allowing frivolous *Heck* claims to go on

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[3] Colum. Hum. Rts. L. Rev., *A Jailhouse Lawyer's Manual* 425 (11th ed. 2017).
[4] Rachel Meeropol & Ian Heads, The Center of Constitutional Rights & The National Lawyers Guild, *The Jailhouse Lawyer's Handbook: How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison* 67 (2010) (cautioning that "[y]ou can only challenge the fact or length of your prison sentence through a writ of habeas corpus").

unchecked without a strike would encourage simple expedient of pleading unexhausted habeas claims as components of § 1983, contrary to Congress's intention. *Patton*, 136 F.3d at 464.

Therefore, Shelby's three *Heck*-barred claims are strikes because they failed to state a claim and are frivolous, violating the intent and content of § 1915(g) of the PLRA. Ruling this way would create consistency and uniformity in the courts, helping to achieve the PLRA's overall goal of efficiency.

II. The Court's decision in *Kingsley v. Hendrickson* does not eliminate the requirement for a pretrial detainee to prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim for a violation of the pretrial detainee's Fourteenth Amendment due process rights in a 42 U.S.C. § 1983 action.

Whether a subjective or objective standard applied to the §1983 failure-to-protect claims was a matter of first impression in the Fourteenth Circuit. R. at 16. In *Kingsley v. Hendrickson*, this Court established an objective reasonableness standard for excessive force claims by pretrial detainees. *Kingsley v. Hendrickson*, 576 U.S. 389, 391-92 (2015). Following the Court's decision in *Kingsley*, circuit courts have split as to whether the *Kingsley* objective reasonableness standard should be extended to other pretrial detainee claims.

The *Kingsley* objective standard requires that a reasonable officer should have known of the risk to the detainee. *Id.* Conversely, the subjective test of deliberate indifference requires an officer or an official to have actual knowledge of the risk to the detainee, as established in *Farmer v. Brennan*. This Court's decision in *Kingsley* did not eliminate the requirement for a pretrial detainee to prove a defendant's subjective intent for deliberate indifference claims. As such the appellate court erred in extending *Kingsley's* objective standard beyond excessive force claims to failure-to-protect claims like Shelby's.

A. *Kingsley* does not and should not apply to failure-to-protect claims.

Kingsley's holding as it relates to excessive force did not and does not abrogate the subjective component of the Fourteenth Amendment. The petitioner Michael Kingsley was arrested on a drug charge and detained in the county jail. *Kingsley*, 576 U.S. at 392. Kingsley placed a piece of paper on a light fixture. *Id.* Officers asked him numerous times to remove the paper but each time he refused. *Id.* Four officers approached Kingsley's cell, and an altercation between Kingsley and the officers ensued. *Id.* As a result, Kingsley filed a §1983 complaint claiming two of the officers used excessive force against him, in violation of the Fourteenth Amendment's Due Process Clause. *Id.* at 393.

The narrow question before the Court in *Kingsley* was whether, "to prove an excessive force claim, a pretrial detainee must show that the officers were *subjectively* aware that their use of force was unreasonable, or only that the officers' use of that force was objectivity unreasonable." *Id.* at 391-92. The Court was specifically looking at an excessive force claims, not all other claims that may be brought by a pretrial detainee. Moreover, the decision noted,

> We acknowledge that 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 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.* at 402.

The Court intentionally did not apply *Kingsley* beyond the excessive force context so any attempts to do so now would be inappropriate.

Furthermore, the facts in *Kingsley* are not analogous to the facts in the current case in front of the Court. The officers in *Kingsley* did not accidentally or negligently apply force onto the petitioner. Rather, the officers acted purposefully and knowingly against *Kingsley*. *Id.* at 396. On the contrary, Officer Campbell did not intentionally combine the individuals in rival gangs.

Instead, he brought Shelby out of his cell for what he through was a typical walk to recreation and unknowingly exposed him to the Bonuccis. Therefore, it is inappropriate to draw a comparison and attempt to apply the *Kingsley* standard given the cases are factually distinct. The Court specifically declined to extend the subjective standard beyond the context of excessive force claims by pretrial detainees. *Id.* at 402. Thus, doing so now is going against the spirit of the decision in *Kingsley*.

This Court has previously held it is, "of course contrary to all traditions of our jurisprudence, to consider the law on this point conclusively resolved by broad language in cases where the issue was not presented or even envisioned." *R.A.V. v. City of St. Paul,* 505 U.S. 377, 386 n.5 (1992). Applying *Kingsley's* general pronouncements on excessive force claims would disregard established principles of constitutional law contrary to all traditions of jurisprudence. Shelby is intending to put the cart before the horse by applying the narrow decision of *Kingsley* broadly to failure-to-protect claims. Such an application not only goes beyond the decision of this Court in *Kingsley* but also beyond time-honored jurisprudence traditions. Furthermore, applying *Kingsley* beyond the limited scope of excessive use of force would set a dangerous precedent. As extending it would go contrary to the intention of the court, and would restrict public officials from operating efficiently due to constant fear of litigation. Broadly applying a general pronouncement made by this court would set a dangerous precedent for future cases that seek to extend a general pronouncement on one issue to a broad group of issues.

i. Circuit courts have held *Kingsley* does not apply beyond use of force claims.

Circuit courts have held that *Kingsley* is limited to and does not apply beyond excessive use of force claims. These courts held *Kingsley* did not and does not abrogate the subjective

component of Fourteenth Amendment deliberate indifference claims. As such the subjective standard for deliberate indifference claims should be applied in a failure-to-protect context.

The Fifth Circuit held that *Kingsley* did not abrogate the circuit's deliberate indifference precedent. *Crandell v. Hall*, 75 F.4th 537, 544 (5th Cir. 2023); s*ee also Cope v. Cogdill*, 3 F.4th 198, 207 n.7 (5th Cir. 2021). In *Crandell*, the court reviewed a claim of violation of the pretrial detainee's Fourteenth Amendment right to protection from a known suicide risk. *Crandell*, 75 F.4th at 544. The question at issue was whether the official had gained actual knowledge of substantial risk of suicide and responded with deliberate indifference. *Id.* The court held that the *Kingsley* standard for excessive force did not apply to failure-to-protect cases. *Id.* Rather, the deliberate indifference subjective test applied. *Id.* The Fifth Circuit joined its sister circuits in applying the subjective over objective standard regardless of the ruling in *Kingsley*. *See Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 425 n.4 (5th Cir. 2017) (holding the Fifth Circuit continued to apply a subjective standard post-*Kingsley* and at the time only the Ninth Circuit had extended *Kingsley*'s objective standard).

Similarly, the Eighth Circuit held *Kingsley* was limited to excessive-force allegations for pretrial detainees. In *Whitney*, a pretrial detainee committed suicide by hanging himself in his jail cell at the city jail. *Whitney v. City of St. Louis*, 887 F.3d 857, 859 (8th Cir. 2018). The deceased's father brought action in state court, asserting § 1983 claims and state law wrongful death claims against the city and correctional officer. *Id.* The court applied the subjective standard for the deliberate indifference claim, holding *Kingsley* can only apply to excessive force claims. *Id.* at 861 n.4.

In line with other circuits, the Eleventh Circuit held *Kingsley* does not apply to deliberate indifference. In *Dang*, a pretrial detainee brought § 1983 action against a county sheriff in his

official capacity and county jail medical staff, alleging that he received inadequate medical care for his symptoms of meningitis, resulting in multiple strokes and permanent injuries. *Dang by & through Dang v. Sheriff, Seminole Cnty.*, 871 F.3d 1272, 1277 (11th Cir. 2017). The court applied the subjective component in evaluating deliberate indifferent claims. *Id.* at 1280. The court declined to extend *Kingsley* beyond the excessive force context as *Kingsley* was not "squarely on point" with a claim of deliberate indifference. *Id.* at 1283 n.2.

Applying the reasoning from the aforementioned decisions to the case before this Court, *Kingsley* does not abrogate the deliberate indifference precedent. As the Fifth, Eighth, and Eleventh Circuits have held, *Kingsley* only applies to the narrow scope of excessive force claims. Therefore, it is inappropriate to extend *Kingsley* beyond excessive force claims. The proper standard to apply is the deliberate indifference subjective standard to evaluate Shelby's claim.

B. The deliberate indifference subjective test from *Farmer v. Brennan* should be applied to all deliberate indifference claims.

The subjective deliberate indifference standard is the proper standard to be applied in this case. An officer must have subjective, actual knowledge of the risk to the inmate's safety to be held liable in deliberate indifference claims like failure-to-protect claims. A prison official is deliberately indifferent to a substantial risk of serious harm to an inmate only if the official was subjectively aware of the risk. *Farmer v. Brennan*, 511 U.S. 825, 835 (1994); *see also Estelle v. Gamble*, 429 U.S. 97, 102-106 (1976) (holding a prisoner's Eighth Amendment right against cruel and unusual punishment is not violated if medical personnel are negligent in diagnosing or treating a medical condition).

Under the Eighth Amendment, inmates are protected and can assert a cause of action when prison officials act with deliberate indifference to the risk of harm to a prisoner, an individual who has been convicted and sentenced. *Farmer*, 511 U.S. at 835. Farmer was a

transgender prisoner who was beaten and raped shortly after being transferred to a different federal prison. *Id.* at 830. Farmer filed suit against several prison officials arguing the officials were deliberately indifferent to his safety in violation of the Eighth Amendment. *Id.* at 831. The suit alleged that the officials knew of Farmer's transgender status and knew of the violent environment of the new prison Farmer was placed into. *Id.* The court held that an officer must know an inmate faces substantial risk of serious harm and disregards that risk to be held liable under the Eighth Amendment. *Id.* at 835.

In the opinion the court in *Farmer* reasoned, "an excessive risk to inmate health or safety; the official must be aware of the facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw that inference." *Id.* at 837. Based on the ruling in *Farmer*, the officer must have subjective actual knowledge of the risk to inmate safety to be held liable under deliberate indifference claims such a failure-to-protect claims. *Id.* at 843.

Farmer remains the flagship case on deliberate indifference. *Kingsley* did not abrogate the deliberate indifference precedent. *See Crandell*, 75 F.4th at 544. In fact, the Court in *Kingsley* never referenced, alluded to, or cited *Farmer*, which further illustrates *Farmer* maintains the standard on subjective deliberate indifference. Had the Court intended for *Kingsley* to overrule *Farmer*, the Court had the opportunity to do so in the opinion. Declining to do so reflects a desire to maintain the *Farmer* precedent.

Under the subjective deliberate indifference standard, Officer Campbell would need to have had actual knowledge of the risk to Shelby. Officer Campbell is an entry-level officer, not a gang intelligence officer, and had called in sick the morning of the gang intelligence meeting. R. at 5. Moreover, Officer Campbell did not know or recognize Shelby when he asked if Shelby wanted to go to recreation. R. at 6. As it is not required, Officer Campbell did not refer to the

hard copy list of inmates with special status, nor look at the inmate database. R. at 6. During their only interaction, Shelby did not reference the Geeky Binders, he was not dressed like the Geeky Binders, and he did not avail himself as even a gang member. All Officer Campbell did know was that he was set to take an inmate to recreation, just as he did every day. Based on the facts, Officer Campbell did not have actual knowledge of gang status.

i. The *Farmer* subjective standard applies to pretrial detainees and prisoners alike, regardless of whether the claim arises under the Eighth Amendment or Fourteenth Amendment.

Under *Farmer*, the same subjective standard applies to pretrial detainees and prisoners alike, regardless of whether the claim arises under the Eighth Amendment or Fourteenth Amendment. This Court should hold that the subjective standard applies in pretrial detainees' failure-to-protect claims.

The Eighth Amendment provides that prisoners cannot be punished cruelly or unusually. U.S. Const. amend VIII. Under *Farmer*, the Eight Amendment protects inmates when prison officials act with deliberate indifference to the risk of harm to the prisoner. *Farmer*, 511 U.S. at 835.

While the Eighth Amendment provides rights for prisoners, the Fourteenth Amendment provides for rights of a pretrial detainee. Under the Due Process Clause, pretrial detainees cannot be punished prior to an adjudication of guilt. U.S. Const. amend. XIV. This Court has recognized that claims by pretrial detainees are scrutinized under the Fourteenth Amendment Due Process Clause. *See Bell v. Wolfish*, 411 U.S. 520, 535-37 (1979). The Fourteenth Amendment's Due Process Clause protects a pretrial detainee from the right to be free from any punishment. *Id.* at 535-36.

Since Shelby was a pretrial detainee at the time of the attack, his claim under § 1983 arises from protections under the Fourteenth Amendment. While the Fourteenth Amendment is directly applicable to pretrial detainees, the Eighth Amendment can still apply to pretrial detainees. In cases analogous to Shelby's, courts have recognized that even when the Fourteenth Amendment applies because to a pretrial detainee, the Eighth Amendment should be the standard for the analysis. *See Whitney*, 887 F.3d at 860 (arguing that the Fourteenth Amendment extends the protection, the Eighth Amendment prohibits officials from acting with deliberate indifferent to pretrial detainees).

Shelby is protected from the right to be punished in any way. However, it does not protect pretrial detainees from the right to be free from harm that may result from mistake or oversight from officers. *Id.* No Constitutional provision provides for a right of pretrial detainees from protection from mistake or oversight from officers as that is closer to negligence. Officer Campbell did not punish Shelby; rather, his mistake led to Shelby's harm. Without actual knowledge of Shelby's gang status, Officer Campbell did not punish Selby prior to an adjudication of guilt by mistakenly placing Shelby and Bonucci gang members together. (R. at 9).

Under *Farmer*, the same subjective standard applies to pretrial detainees and prisoners alike, regardless of whether the claims arise under the Eighth Amendment or Fourteenth Amendment. *Farmer* applied the Eighth Amendment as the case related to convicted individuals; however, the case can be applied to pretrial detainees alike. As previously discussed, in the failure-to-protect context, the *Farmer* deliberate indifference subjective standard controls, as *Kingsley* did not alter this framework. The deliberate indifference standard, "entails something more than mere negligence". *Farmer*, 511 U.S. at 835. There is a delineation as to whether the

official's actions were merely a result of negligence or if it resulted from an intentional act serving to punish. *Id.* at 839.

It is established that Officer Campbell did not have actual knowledge of Shelby's gang status. Officer Campbell unknowingly brought Shelby together with Bonucci inmates. There are no facts that indicate Officer Campbell sought to punish Shelby. This Court has previously defined punishment as serving either retributive or deterrent purposes. *See Austin v. United States*, 508 U.S. 609, 618 (1993). No facts indicate Officer Campbell combined the inmates to serve as either retribution or a deterrent against Shelby – Officer Campbell did not even know who Shelby was. Rather, Officer Campbell was unaware of Shelby's gang status and unable to know the potential harm in placing the detainees together. Under the *Farmer* framework, Officer Campbell did not have actual knowledge, and therefore, did not have the requisite state of mind to be held liable to Shelby under the Fourteenth Amendment.

ii. Even if *Kingsley* applies, Shelby's claim does not meet the threshold requirement of the Fourteenth Amendment Due Process Clause.

While *Kingsley* should not apply beyond excessive force claims to failure-to-protect claims, should this Court hold that *Kingsley* does apply, Shelby's claim is beneath the threshold of a constitutional due process claim. *Kingsley* reiterated that liability for negligently inflected harm is categorically beneath the threshold of constitutional due process. *Kingsley*, 576 U.S. at 396; s*ee also County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) (holding liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process). Moreover, this was further emphasized by the court in *Dang* while dealing with an issue of deliberate indifference, stating: "regardless of whether *Kingsley* could be construed to have affected the standard for pretrial detainees' claims involving inadequate medical treatment due to

deliberate indifference, whatever any resulting standard might be, it could not affect Dang's case". *Dang*, 871 F.3d at 1283 n.2.

Officer Campbell did not have actual knowledge of Shelby's gang status, and his resulting actions were at most negligent. Negligence can be defined as the behavior that fails to meet the level of care that a *reasonable* person would have exercised under the same circumstances.[5] Procedural due process deprivation cannot be violated by mere negligent behavior, rather procedural due process deprivation under the Fourteenth Amendment must be deliberate and constitute an affirmative abuse of power. *See Daniels v. Williams*, 474 U.S. 327, 334 (1986) (holding a showing of mere government negligence is not sufficient to state a claim for deprivation of an individual's interests under the Due Process Clause). If a pretrial detainee asserts a failure to protect claim under the Due Process Clause, they must allege something more than just mere negligence. *Castro v. Cnty. of L.A.*, 833 F.3d 1060, 1071 (9th Cir. 2016).

Officer Campbell did not act intentionally or deliberately when he placed Shelby with the Bonucci members for recreation. Instead, Officer Campbell acted as a reasonable person would do and performed all mandatory tasks. While it is not certain whether or not Officer Campbell reviewed the meeting minutes, what is certain is that he performed what was necessary and required for him to do his job. R. at 6. Reading the hard copy list or searching up a specific prisoner's gang affiliation by going to two separate files online are both voluntary. If these were reasonable actions to take, then they would be mandatory. A reasonable person can only be expected to do what is expected of them – Officer Campbell did just that. Officer Campbell did not need to go above and beyond a reasonable man. It is not reasonable to expect all officers to do what is not required of them. The jail could have had further safeguards in place to prevent

[5] Negligence Definition, *Black's Law Dictionary* (11th ed. 2019), *available at* Westlaw.

such instances, such as not allowing the mixing of detainees between the blocks. Marshall jail's subsequent failure to place safeguards is not the fault of Officer Campbell.

Further, nowhere in the record does it state he acted with intent; neither does Shelby allege facts that Officer Campbell's actions in placing Shelby and the Bonucci clan members together were intentional rather than a mere mistake. Officer Campbell's inactions do not amount to a claim of negligence, let alone go beyond a claim of negligence. If the court were to deviate from this Fourteenth Amendment threshold and find Officer Campbell acted beyond negligently, it would open all officers to more scrutiny and lead to a wave of litigation. Public officials need to be able to do their jobs without fear of litigation. Nevertheless, since mere negligence is below the threshold of due process claim, Shelby is not entitled to relief under the Fourteenth Amendment's Due Process Clause.

CONCLUSION

The decision of the appellate court in favor of the Respondent-Appellant Arthur Shelby on both courts should be reversed, and the ruling of the district court should be upheld.