No. 23-05

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In The

# Supreme Court of the United States

2023

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**CHESTER CAMPBELL,**

*Petitioner,*

v.

**ARTHUR SHELBY,**

*Respondent,*

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

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## BRIEF FOR THE PETITIONER

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Team 9

*Counsel for the Petitioner*

## QUESTIONS PRESENTED

1. Does a *Heck v. Humphrey* dismissal of a civil action constitute a "strike" within the meaning of the Prison Litigation Reform Act?

2. After this Court's decision in *Kingsley* in the context of excessive force claims, should this Court continue to require a pretrial detainee prove a defendant's subjective intent in a deliberate indifference failure-to-protect claim under the Fourteenth Amendment Due Process Clause in a 42 U.S.C. § 1983 action?

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## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitutional Provisions

**The Eight Amendment to the United States Constitution** provides that, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

**The Fourteenth Amendment to the United States Constitution** provides that, "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."

Statutes

**Title 42 United States Code § 1983** provides in relevant part that, "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..."

**Title 28 United States Code § 1915 (g)** provides that, "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."

## STATEMENT OF THE CASE

Factual Background

Arthur Shelby ("Respondent") is the second-in-command of the Geeky Binders. (R at 2). The Geeky Blinders are a street gang that formerly owned the town of Marshall. (R. at 2-3). In owning the town, the gang ran businesses, owned real estate and some members even held public office. (R. at 3). The Shelby has been in trouble with the law multiple times for crimes such as drug distribution and possession, assault, and brandishing a firearm. (R. at 3). Consequently,

Shelby has been in and out of prison for the past few years. (R. at 3). During a previous detention, Shelby filed three separate civil actions under 42 U.S.C. § 1983 against officials from the prison and state as well as against the United States. (R. at 3). Each action was dismissed under *Heck v. Humphrey*. (R. at 3).

More recently, the Geeky Blinders began losing power over Marshall because a rival gang, the Bonucci's, led by Luca Bonucci, moved into town. (R. at 3). The rival gang took over the town and maintained power over the town officials through bribes. (R. at 3). This bribing scheme even included Marshall police officers and guards at the Marshall jail. (R. at 3). The luck of the Bonuccis soon ran out, however, as Luca and other members are currently in jail. (R. at 3). The town corrected the corruption by firing many officers in the jail who were involved and hired new officers that had no connection to the Bonuccis. (R. at 3). Even from jail, however, the Bonuccis have substantial power over the town. (R. at 3).

On January 31, 2020, Shelby was arrested at a boxing match he and other Geeky Binders were attending when Marshall police raided it with warrants for their arrest. (R. at 3). The others evaded police, but Shelby was caught and charged with battery, assault, and possession of a firearm by a felon. (R. at 3-4). At the Marshall jail, Shelby was booked by Dan Mann, who immediately recognized Shelby as a member of the Geeky Binders because of his distinct outfit and Geeky Binders pen with hidden awl. (R. at 4). Mann inventoried Shelby's belongings and made note that he arrived with the weapon hidden in the pen. (R. at 4). While being booked, Shelby exclaimed to Mann, "The cops can't arrest a Geeky Binder!" and "My brother Tom will get me out of here, just you wait." (R. at 4).

As part of the booking procedure, officers at the jail are required to make both paper and digital copies of intake forms. (R. at 4). The online database contains a file for each inmate that

includes information such as their charges, their inventoried items, their medications, their gang affiliation, and other important information. (R. at 4). The gang affiliation area of the form allows officers to state the prisoner's gang and if there are any hits out on that particular inmate. (R. At 4). Because of the high gang activity in the town, the jail employs gang intelligence officers to review each incoming inmate's entry in the database. (R. at 4). Mann properly entered all the pertinent information including updating information under Shelby's gang affiliation tab. (R. at 4-5).

As per the jail procedures, gang intelligence officers reviewed and edited Shelby's file. (R. at 5). The intelligence officers knew who Shelby was because of his high-ranking status in the Geeky Binders. (R. at 5). The officers also knew of a recent dispute between the two gangs caused when Shelby's brother killed Bonucci's wife thus making Shelby a prime target of a counter-assassination. (R. at 5). Because of this knowledge, the intelligence officers made a special note in Shelby's file, printed out paper notices to be placed at every administrative area in the jail, and added his name and status to all rosters and floor cards in the jail. (R. at 5). Additionally, the intelligence officers hosted a meeting where they informed the other officers of Shelby's presence, his status, and that he would be housed in Block A away from the Bonuccis in Blocks B and C. (R. at 5). At the meeting, the intelligence officers reminded the others to check the rosters and floor cards often to make sure the rival gangs did not come into contact in common areas of the jail. (R. at 5).

Officer Chester Campbell ("Petitioner") was a newer guard at the Marshall jail but was trained properly and had been meeting job expectations as long as he was employed. (R. at 5). On the day of the meeting about Shelby, Campbell was marked present, but jail records showed that he had called in sick that morning and did not arrive at the jail until after that meeting. (R. at 5-6).

The gang intelligence officers require all absent officers to review the minutes of the meeting in the database and the database would show whether individual officers viewed it. (R. at 6). At some point after that date, however, a system glitch wiped all records of access to the database for that particular meeting date of January 1. (R. at 6). On January 8, 2021, Campbell was tasked with taking inmates to and from the recreation room. (R. at 6). Campbell asked Shelby if he wanted to go to recreation and he answered affirmatively. (R. at 6). Campbell did not recognize Shelby or know that he had a special status at this time, though he did have a roster. (R. at 6).

Campbell gathered Shelby and took him to the guard station to wait for other inmates. (R. At 6). Around this time, another inmate from Block A yelled to Shelby, "I'm glad your brother Tom finally took care of that horrible woman." to which Shelby responded, "yeah, it's what that scum deserved." (R. at 6). Campbell told them to be quiet and got another inmate from Block A. (R. at 6). After all the prisoners were gathered from Block A, Campbell took Shelby and the rest of the group to Blocks B and C where three Bonuccis were brought into the group. (R. at 7). The three Bonuccis attacked Shelby with their fists and a club. (R. at 7). Campbell attempted to hold them back but was overpowered until more guards arrived. (R. at 7).

Procedural History

On February 24, 2022, Shelby filed a 42 U.S.C. § 18983 action pro se against Campbell in his individual capacity. (R. at 7). Shelby also filed a motion to proceed in forma pauperis in that action. (R. at 7). The trial court denied the motion on April 20, 2022, based on its understanding that Shalby had accrued three "strikes" under the Prison Litigation Reform Act. (R. at 7). The trial court ordered Shelby to pay $402 in costs to file which he did. (R. at 7). Shelby argued in his complaint that Campbell violated his Constitutional rights when he failed to protect Shelby while

he was a pretrial detainee. (R. at 7). Campbell filed a Motion to Dismiss arguing only that Shely failed to state a claim. (R. at 8).

The trial court granted Campbell's motion on July 14, 2022. (R. at 8). First, the court held that though pretrial detainees may not be punished at all under the Constitution, the subjective knowledge of risk standard applies to them as well as to prisoners. (R. at 8-9). Second, the court held that because the subjective standard applied, Shelby failed to allege facts supporting that Campbell had the subjective knowledge required to be liable for his harm. (R. at 8). Third, the court held that nothing in the record suggested that Campbell had actual knowledge of Shelby's gang affiliation. (R. at 11).

Shelby timely appealed to the United States Circuit Court for the Fourteenth Circuit with arguments submitted on December 1, 2022. (R. at 12). The Fourteenth Circuit reversed the district court's decision and remanded both issues to the district court. (R. at 19). The court first held that *Heck* dismissals did not automatically constitute strikes under the PLRA because the PLRA was enacted to curb meritless and wasteful litigation whereas *Heck* dismissals were for prematurity rather than invalidity. (R. at 15). The court further held that the standard for a failure-to-protect claim was "more than negligence, but less than subjective intent-- 'something akin to reckless disregard.'" (R. at 18). It further held that in alignment with this standard, Shelby alleged sufficient facts to suggest that Campbell acted in reckless disregard for his safety. (R. at 19). Campbell then appealed that decision to the Supreme Court. (R. at 21).

This Court granted Certiorari to assess (1) whether the "dismissal of a prisoner's civil action under *Heck v. Humphrey* constitute[s] a "strike" within the meaning of the Prison Litigation Reform Act..." and (2) whether "this Court's decision in Kingsley eliminate[s] 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." (R. at 21).

## SUMMARY OF THE ARGUMENT

***The dismissal of a civil action under Heck v. Humphrey is a strike under the PLRA*** because Respondent's claim fails to meet *Heck*'s favorable termination requirement and because Shelby's claim is the type of meritless, wasteful litigation that 28 U.S.C. § 1915(g) and the three strikes rule was enacted to prohibit.

***Respondent's claim fails to meet Heck's favorable termination requirement*** because Shelby did not establish that his conviction or sentence had been overturned. If a complaint is dismissed under *Heck* and the underlying conviction is not terminated in favor of the complainant, then the complaint fails to state a claim and thus constitutes a strike under the PLRA. None of the sentences or convictions that Shelby filed claims for were overturned and he served them all out, thus none of the three were terminated in his favor and all three constituted separate strikes.

***Respondent's Claim is the Type of Meritless, Wasteful Litigation that 28 U.S.C. § 1915(g) and the Three Strikes Rule were Enacted to Prohibit*** because Petitioner has not met his burden of production to show why the three dismissals were not strikes under the PLRA. The analysis involves a burden-shifting test that begins with the Respondent having to show that the three claims were dismissed for failure to state a claim upon which relief could be granted. Respondent has met this burden above. The burden then shifts to Shelby to make a showing of why the dismissals were not strikes, and he has failed to do so. For a *Heck* dismissal to not constitute a strike, the frivolous claim must have been made because the prisoner was in imminent danger of serious physical harm. The record does not reflect that Shelby was in imminent danger at the time he made the three

claims. Because Shelby failed to allege any facts that he was in imminent danger at this time, all three of his claims are strikes under the PLRA.

***Respondent's complaint failed to state a Fourteenth Amendment failure-to-protect claim upon which the Respondent is entitled to relief*** because *Kingsley*'s objective approach to Excessive Force claims does not abrogate the requirement set out by the Supreme Court in *Farmer* that Shelby prove an officer's subjective knowledge of a risk to the Petitioner in a Failure-to-protect claim and Petitioner's conduct did not rise to the level of deliberate indifference to a risk to Shelby's health and safety.

***Kingsley's objective approach to Excessive Force claims does not abrogate the requirement set out by the Supreme Court in Farmer that Respondent prove an officer's subjective knowledge of a risk to the Petitioner in a Failure-to-protect claim*** because *Kingsley* set out the standard for excessive force claims which are distinct from failure to protect claims. In *Kingsley*, the court focused on what makes force excessive and did not refer to any type of deliberate indifference claim. Excessive force claims are based on an officer's deliberate decision to act whereas failure-to-protect claims are based on an officer's failure to act.

***Petitioner's conduct did not rise to the level of deliberate indifference to a risk to Respondent's health and safety*** **because** no facts in the record allege that Campbell had actual knowledge of the risk to Shelby. Shelby would have had to allege facts that establish that the risk of harm was known to Campbell or that the risk was so obvious that it should have been known but Shelby failed to allege such facts. To impute subjective knowledge to an officer, the record would have to indicate that the officer refused to verify facts that he strongly suspected to be true. Nothing in the record showed that Campbell strongly suspected that there was such a risk to Shelby

and the fact that he could have known of the risk from the documents he had access to is not enough to say that he should have known.

***Even If This Court Were to Extend Kingsley's Objective Standard Beyond Claims of Excessive Force, Respondent Has Failed to Allege Sufficient Facts to Meet This Standard*** because the objective standard set out in Kingsley requires more than gross negligence and Petitioner's conduct does not rise to the level of recklessness. Campbell is a regular jail officer; he is not and was not a gang intelligence officer. Campbell did not treat Shelby with any less care than normal, rather he treated Shelby like any other inmate. Though Campbell did not follow the jail's gang-related safety procedures, he took normal care with Shelby. It may have been negligent when Campbell failed to follow the safety precautions but that alone does not raise the negligence to recklessness. He even attempted to break up the fight while outnumbered, risking injury to himself. The Due process clause does not bring liability to officials every time someone under their care is harmed. Neither a mere lack of due care nor an inadvertent failure is enough to qualify as recklessness.

## ARGUMENT

### I. The Dismissal of a Civil Action Under *Heck V. Humphrey* Is a Strike Under The PLRA.

Section 1915(g) of the Prison Litigation Reform Act ("PLRA") bars prisoners from proceeding in forma pauperis if they have brought three or more actions or appeals that has been dismissed because it was "frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). One exception to this rule is that a prisoner may proceed in forma pauperis if they can prove that they were under an imminent threat of serious physical injury. This three strikes provision, as a part of the PLRA, was enacted by Congress in order to "filter out

the bad claims and facilitate consideration of the good." *Jones v. Bock*, 549 U.S. 199, 204 (2007). By doing this, the legislature hoped to "reduce the quantity and improve the quality of prisoner suits." *Porter v. Nussel*, 534 U.S. 516, 524 (2002).

Under what has been called "the *Heck* doctrine," a plaintiff lacks a cause of action under 42 U.S.C. § 1983 "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 a 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).

The circuits are split as to whether dismissals under *Heck v. Humphrey* constitutes a strike under the Prison Litigation Reform Act, and this Court should side with the Third, Fifth, Tenth, and District of Columbia Circuits and hold that these dismissals are "strikes" under 28 U.S.C. § 1915(g) because they fail to state a claim upon which relief can be granted.

### A. Shelby's Claim Fails to Meet *Heck's* Favorable Termination Requirement, Therefore it Fails to State a Claim for Which Relief Can be Granted.

A plaintiff must establish that their conviction or sentence has already been overturned in order to bring an action alleging unconstitutional conviction or imprisonment. In *Heck v. Humphrey*, Roy Heck was sentenced to 15 years in state prison for voluntary manslaughter. *Heck*, 512 U.S. at 484. Heck filed an action under 42 U.S.C. § 1983 seeking compensatory and punitive damages, but not injunctive relief. *Id*. His action was dismissed in the district court without prejudice, and he appealed to the Seventh Circuit. *Id*. The Indiana Supreme Court affirmed Heck's conviction and sentencing while his § 1983 appeal was pending. *Id*. The Seventh Circuit affirmed the dismissal of Heck's action. This case brought the question of whether an inmate may bring a claim under 42 U.S.C. § 1983 in an attempt to recover damages stemming from an unlawful

conviction if the conviction has not been held invalid. *Id*. The Court held that a plaintiff cannot bring an action alleging unconstitutional conviction or imprisonment without establishing that their conviction or sentence has already been overturned. *Id*. at 486-87.

The Supreme Court in *Heck* turned to the tort common law claim of malicious prosecution in order to find rules that would "defin[e] the elements of damages and the prerequisites for their recovery." *Id*. at 483 (quoting *Carey v. Piphus*, 435 U.S. 247, 257–58 (1978)). In malicious prosecution claims, there is a requirement that the prior criminal proceeding was terminated in favor of the accused party. *Id*. at 484. The Court held that this "favorable termination requirement" also applied to 42 U.S.C. § 1983 claims, and in *Heck* dismissals, this meant that the plaintiff must show that their conviction was invalid or questioned by a writ of habeas corpus. *Id.* at 486. The Court reasoned that any claims brought under section 1983 were premature if these requirements were not met, and therefore should be dismissed under their *Heck* doctrine. *Id*. at 489

The Third Circuit Court of Appeals held that a plaintiff must meet *Heck*'s favorable termination requirement, and if they do not, then their claim will be dismissed for a failure to state a claim and this counts as a strike under the Prison Litigation Reform Act. ***427.*** It reasoned that "[a]ny other rule is incompatible with *Heck*," and the favorable-termination requirement is necessary to bring a complete cause of action under § 1983. *Id.*

In *In re Jones*, the United States Court of Appeals for the District of Columbia Circuit addressed this same question of whether a dismissal under *Heck v. Humphrey* counts as a "strike" under the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). *In re Jones*, 652 F.3d 36 at 37 (D.C. Cir. 2011). Inmate Antoine Jones filed to proceed in forma parentis pursuant to 42 U.S.C. 1983. ***Id.*** Over the course of his incarceration, Jones filed at least three civil actions or appeals that were dismissed because they were "frivolous, malicious, or fail[ed] to state a claim upon which relief

may be granted" pursuant to 28 U.S.C. § 1915(g). ***Id.*** Under *Heck v. Humphrey*, a claim must be dismissed for a failure to state a claim if the case was filed prematurely. The court held that since there was no proof that Jones's conviction or sentence had been reversed or called into question under a writ of habeas corpus, the plaintiff's claim was premature. ***Id. at 38.*** It reasoned that since the claim was premature and filed before his conviction was overturned, the prisoner-plaintiff failed to state a claim. *Id.*

Shelby has been in prison several times over the years. Throughout the course of his numerous imprisonments, Shelby has filed three different claims under 42 U.S.C. § 1983 against prison officials, state officials, and the United States. (R. at 3). Each of these actions called into question Shelby's sentence or conviction, therefore they were all dismissed without prejudice under the *Heck* doctrine since his conviction had not been invalidated or overturned. *Id*. While the record does not state what these prior claims or convictions were, Shelby served out his sentences. Therefore, the convictions were not overturned, and Shelby's claims failed to meet the favorable termination requirement and were invalid because they failed to state a claim.

Therefore, since Shelby's claim fails to meet *Heck's* favorable termination requirement, it fails to state a claim for which relief can be granted.

### B. Shelby's Claim is the Type of Meritless, Wasteful Litigation that 28 U.S.C. § 1915(g) and the Three Strikes Rule were Enacted to Prohibit.

The in forma pauperis statute was enacted by Congress so that indigent citizens' filing fees could be waived in their claims in federal court. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 341 (1948). However, this led to a drastic increase in cases, specifically civil rights litigation, so Congress enacted the PLRA to reduce the number of frivolous lawsuits from incarcerated litigants. Molly Guptill Manning, *Trouble Counting to Three: Circuit Splits and*

*Confusion in Interpreting the Prison Litigation Reform Acts 'Three Strikes Rule*,*'* 28 Cornell J. L. & Pub. Pol'y 207 (2018).

When a party challenges the in forma pauperis status of a prisoner-plaintiff, that party has the burden of production, to show the prisoner-plaintiff is unable to bring their action under the parameters set by 28 U.S.C. § 1915(g). *Ray v. Lara*, 31 F.4th 692 at 696 (9th Cir. 2022). Once this has been shown, the burden shifts and the prisoner-plaintiff must explain why their previous dismissals are not strikes under the PLRA. *Id.*

Here, the Petitioner has met their burden of production by showing the Court that Shelby's three previous claims as a prisoner-plaintiff were dismissed for a failure to state a claim under the *Heck* doctrine. While the record is silent as to the facts behind these claims, dismissal under this doctrine means that Shelby failed to state a claim upon which relief can be granted, which is the definition of a strike under 28 U.S.C. § 1915(g). That means that the burden has now shifted. The Respondent, however, has not met their burden of explaining to the Court why these claims are not strikes. The Respondent has convinced themselves of the circular argument adopted by some circuits, that a *Heck* dismissal is not a strike simply because these claims are premature. (R. at 15). The statute is clear as to the type of claims considered to be strikes if they are dismissed, and the Respondent has not produced any explanation for why the previous civil actions do not fall under this definition.

Courts on the other side of the split, such as the Ninth Circuit in *Washington v. Los Angeles County Sheriff's Department*, have held that a dismissal of a claim under the *Heck* doctrine does not constitute a strike under the PLRA. *Washington v. L.A. County Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2019). These Circuits fail to consider why Congress enacted these protections for the court system. One of Washington's (the plaintiff-prisoner) counts was dismissed, and the court

noted that the reason for the judge magistrate's denial of the claim was not because it failed to state a claim or was frivolous or malicious, pursuant to the prison Litigation Reform Act. ***Id. at 1052.*** However, one of the other claims filed by Washington was clearly marked as one that was frivolous, malicious, or failed to state a claim, meaning it would constitute a strike. ***Id. at 1053.***

In *Smith,* Dana Lydell Smith was a prisoner of the State of Idaho, and he filed several civil actions in the federal district court while incarcerated that were dismissed and counted as "strikes." *Smith v. Veterans Admin.*, 636 F.3d 1306 at 1308 (10th Cir. 2011). After filing another action, Smith was asked to show cause as to why he should not have to pay and proceed in forma pauperis. Id. at ***1309.*** The court held that there is only one exception under which a dismissal under *Heck* does not constitute a strike, and that exists when a prisoner is under imminent danger of serious physical injury. ***Id.*** "To meet that exception, appellant was required to make 'specific, credible allegations of imminent danger of serious physical harm[.]" Kinnell v. Graves, 265 F.3d 1125, 1127-1128 (10th Cir. 2001). The court in *Smith* also held that *Heck's* favorable-termination element was an essential requirement. *Smith*, 636 F.3d at 1310 It stated that Smith failed to meet the precedent conditions of his appeal and was ordered to pay his filing fee. The court reasoned that while Smith showed cause, he was still barred due to his *Heck* dismissals and inability to show any imminent threat of serious physical harm. *Id.*

Here, the court below held that *Heck* dismissals did not automatically constitute strikes under the PLRA because the PLRA was enacted to curb meritless and wasteful litigation whereas *Heck* dismissals were for "prematurity rather than invalidity." (R. At 15). However, the Petitioner argues that under the caselaw a premature claim is an invalid one. The statute was enacted to prevent plaintiff-prisoners from bringing numerous suits that would waste the court system's time

and resources. A claim without merits is bound to do this, and a claim that has been brought prematurely is invalid and therefore without merit.

Congress allowed for one exception under the three-strike rule, providing that a plaintiff-prisoner may still file a claim after receiving three strikes if they can prove that they are under a threat of imminent danger of serious physical harm. *Kinnell*, 265 F.3d at 1127. Here, the exception does not apply. Shelby suffered bodily harm at the hands of rival gang members in the prison. (R. at 7). While this one-time incident was unfortunate, Shelby has now been transferred to Wythe prison after his most recent conviction. *Id*. Therefore, any threat he might have been under from the rival gang members at Marshall Jail no longer exists. Since the exception does not apply, Shelby's claim would be meritless and wasteful.

Therefore, Shelby's claim is the type of meritless, wasteful litigation that 28 U.S.C. § 1915(g) and the three strikes rule were enacted to prohibit.

## II. Shelby's Complaint Failed to State a 42 U.S.C. § 1983 Failure-to-protect Claim Under the Fourteenth Amendment Upon Which He is Entitled to Relief.

Under 42 U.S.C. § 1983, any person within the jurisdiction of the United States could have a cause of action against "[e]very 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, [them] the deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983. This cause of action contains no mens rea requirement outside the mens rea required to establish a violation of the underlying constitutional right. The mens rea required to establish a failure-to-protect claim has historically been deliberate indifference, a subjective standard that requires the defendant actually know of the risk of harm. *Farmer v. Brennan*, 511 U.S. 825, 846 (1994).

This court should continue to apply this standard in the context of pretrial detainee claims and decline to extend the objective standard proposed in *Kingsley v. Hendrickson* beyond excessive force claims. Here, Shelby failed to allege facts that establish that Campbell was deliberately indifferent to Shelby's safety. Further, Campbell's conduct qualifies, at most, as mere negligence and does not cross the threshold of constitutional Due Process. For these reasons, this Court should reverse the holding of the United States Court of Appeals for the Fourteenth Circuit.

## A. Campbell's Conduct Does Not Rise to the Level of a Constitutional Due Process Violation Under the Appropriate Standard Set Out in *Farmer v. Hendrickson*.

### 1. *Kingsley*'s objective approach to excessive force claims does not abrogate the requirement set out by the Supreme Court in *Farmer* that a detainee prove an officer's subjective knowledge of a risk to the detainee's in a failure-to-protect claim.

In *Farmer v. Brennan*, the Supreme Court set the standard for courts reviewing an inmate's failure-to-protect claim under the Eighth Amendment. The Court in *Farmer* held that, "to survive summary judgment, he must come forward with evidence from which it can be inferred that the defendant-officials . . . knowingly and unreasonably disregarding an objectively intolerable risk of harm." *Farmer v. Brennan*, 511 U.S. 825, 846 (1994). Thus, the question under *Farmer* is whether the detainee can show that "(1) the failure-to-protect from risk of harm is objectively sufficiently serious; and (2) that prison officials acted with deliberate indifference to inmate health or safety." *Bishop v. Hackel*, 636 F.3d 757, 766 (6th Cir. 2011) (quoting *Farmer*, 511 U.S. at 833, 834).

The Supreme Court has held that pretrial detainee claims must be made under the Fourteenth Amendment Due Process Clause rather than the Eighth Amendment. *Bell v. Wolfish*, 441 U.S. 520,536 (1979). However, the standard of review historically applied to alleged violations of basic needs, like medical care and safety, has been the same under both the Eighth and Fourteenth Amendments. "[T]he State owes the same duty under the Due Process Clause and

the Eighth Amendment to provide both pretrial detainees and convicted inmates with basic human needs, including medical care and protection from harm." *Hare v. City of Corinth*, 74 F3d 633, 650 (5th Cir. 1996). The *Farmer* two-prong test remained the universally accepted standard until *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). *See, e.g.*, *Holden v. Hirner*, 663 F.3d 336 (8th Cir. 2011); *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016); *Clouthier v. County of Contra Costa*, 591 F.3d 1232 (9th Cir. 2010).

Twenty-one years after *Farmer*, the Court in *Kingsley v. Hendrickson* set out an objective standard for excessive force claims. The Court determined that a pretrial detainee making an excessive force claim under the Fourteenth Amendment need only show that force was "objectively unreasonable" for it to qualify as excessive *Kingsley v. Hendrickson, 576 U.S. 389 (2015).* The court in *Kingsley* focused on defining what force constitutes excessive and made no reference to *Farmer* or any type of deliberate indifference claim. It also narrowed the application of its holding to questions of excessive force used against pretrial detainees, "whether the force deliberately used is . . . 'excessive,' should courts use an objective standard only, or instead a subjective standard that takes into account a defendant's state of mind? It is with respect to this question that the U.S. Supreme Court holds that courts must use an objective standard." *Id*. Despite *Kingsley*'s attempt to limit its holding to excessive force claims, the circuit courts have still split on whether *Kingsley* should be applied to exempt pretrial detainees from proving the jail official's subjective knowledge in failure-to-protect claims.

Many circuits, including the Third, Fifth, Eighth, Tenth, and Eleventh circuits have limited the objective standard set out in *Kingsley* only to excessive force claims. *Edwards v. Northampton Cnty.*, 663 Fed. Appx.132, 136 (3rd Cir. 2016)(applying the *Farmer* objective test in the context of deliberate indifference to a pretrial detainee's medical needs); *Cope v. Cogdill*, 3 F.4th 198, 207

n.7 (5th Cir. 2021)(limiting *Kingsley*'s objective standard to claims of excessive force, not other types of deliberate indifference)*; Briesemeister v. Johnston*, 827 Fed. Appx. 615, 616 n.2 (8th Cir. 2020)(applying the subjective definition to deliberate indifference to medical needs) *Strain v. Regaldo*, 977 F.3d 984 (10th Cir. 2020)(rejecting *Kingsley*'s objective approach in a pretrial detainee's deliberate indifference to medical need claim); *Nam Dang ex rel. Vina Dang v. Sheriff, Seminole County Florida*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) (applying the subjective standard and stating that *Kingsley* "involved an excessive-force claim . . . and does not actually abrogate [subjective standard precedent]").

The First and Third circuits have applied the *Farmer* subjective standard to pretrial detainee's failure-to protect claims before *Kingsley* but have yet to reconsider that precedent after *Kingsley*. *Burton v. Kindle*, 401 Fed. Appx. 635, 638 (3rd Cir. 2010); *Calderon-Ortiz v. Laboy-Alvarado*, 300 F.3d 60 (1st Cir. 2002). However, the District Courts in those Circuits have indicated a preference to adhere to pre-*Kingsley* precedent and apply the *Farmer* subjective standard. *See, e.g.*, *Hatik v. Massachusetts*, No. 1:19-cv-11560-IT, 2020 U.S. Dist. LEXIS 147521 (D. Mass. Aug. 17, 2020); *Karmue v. Remington*, No. 17-cv-107-LM-AKJ, 2020 U.S. Dist. LEXIS 46840 (D.R.I. Mar. 18, 2020). This court should uphold the applicability of the subjective standard set out in *Farmer* to deliberate indifference claims made under the Fourteenth Amendment and decline to extend *Kingsley* beyond excessive force claims. This court should apply *Farmer* because the fundamental differences between excessive force claims and failure-to-protect claims makes the *Kingsley* excessive force standard unworkable in the context of failure-to-protect and *Farmer*'s subjective standard has been well established in over two decades of failure-to-protect precedent.

Failure-to-protect claims are distinct from excessive force claims. While both claims are considered under the Fourteenth Amendment when brought by a pretrial detainee, the conduct that

triggers each claim and the standard by which that conduct should be analyzed is very different. This Court has recognized as far back as 1986 that, "[h]istorically, this guarantee of due process has been applied to *deliberate* decisions of government officials." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Excessive force claims under the Fourteenth Amendment concern such deliberate decisions, considering whether an officer was excessive in his "bringing about of certain physical consequences." *Kingsley* 576 U.S. at 395. Conversely, failure-to-protect claims typically concern an officer's failure to act rather than his actions or decisions, whether it be failure to provide necessary medical care, failure to prevent suicide, or failure to prevent one inmate from harming a pretrial detainee like the case before the court today. The distinction between an officer's commission of excessive force claims and his omission to protect an inmate is precisely what makes the *Kingsley* standard unworkable in the context of failure-to-protect.

In support of the objective standard, *Kingsley* on the standard's workability in the context of excessive force claims based on the holding in *Bell v. Wolfish,* 441 U.S. 520 (1979) and several factors; none of which apply in the context of failure-to-protect claims. The precedent set in *Bell* doesn't support an objective standard for pretrial detainee cases. The proper inquiry in *Bell* "to evaluate the conditions of confinement for a pretrial detainee is whether those conditions amount to punishment." *Wolfish*, 441 U.S. at 535. Although the Court in *Kingsley* interpreted *Bell* as permitting objective evidence to be used to show punitive intent, *Bell* still required a showing of punitive intent. *Id.* That punitive intent, either express or inferred, has been equated to the deliberate indifferent standard set out in the Fourteenth Amendment. *Griffith v. Frankin County,* 975 F.3d 554, 569 (6th Cir. 2020). *See also Villegas v. Metropolitan Gov't. of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013); *Roberts v. City of Troy*, 773 F.2d 720, 723 (6th Cir. 1985).

The Court in Kingsley also relied on the idea that an objective excessive force standard was workable because it is already being used in some pattern jury instructions and many officers are trained to interact with detainees "as if the officers' conduct is subject to objective reasonableness." *Kingsley*, 576 U.S. at 399. This rationale does not translate to failure-to-protect claims because it's actually the subjective standard in *Farmer* that has a well-established precedent to guide failure-to-protect claims. And applying an objective standard merely because some training facilities train officers to be extra cautious would require finding that those facilities not only train officers to act as if their use of force was subjected to a reasonableness standard, but that every decision, both to act and to not act, is subject to that standard since failure-to-protect claims like Shelby's are premised off the idea that an officer should have known about a danger but didn't. There is no reasonable way to train officers to be extra cautious over what they don't know.

Further, restricting the applicability of *Farmer*'s objective approach to Eighth Amendment cases and expanding *Kingsley*'s subjective approach would require overturning over twenty years of precedent consistently applying the subjective standard to failure-to-protect claims brought by pretrial detainees. *See Dias v. Voes*, 865 F. Supp 53, 56 (Mass. D. Ct. 1994); *Coscia v. Town of Pembroke*, 659 F.3d 37 (1st Cir. 2011); *Crandell v. Hall*, 75 F.4th 537, 544 (5th Cir. 2023).

**2. Campbell's conduct did not rise to the level of deliberate indifference to a risk to Shelby's health and safety.**

Shelby's complaint fails to sufficiently allege facts to support his failure-to-protect claim because the complaint does not allege that Campbell had actual knowledge of the risk to Shelby's safety. Under the second element set out in *Farmer*, a detainee must allege sufficient facts to show that "prison officials acted with deliberate indifference." *Farmer*, 511 U.S. at 828 (1994). This standard of "deliberate indifference is an extremely high standard to meet." *Leal v. Wiles*, 734 Fed. Appx. 905 (5th Cir. 2018). Courts have interpreted this high standard to mean that "the defendant

[is] aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Nam Dang*, 871 F.3d at 1280. To meet the burden under this element, the detainee must allege facts that establish that the "risk of harm [] is either known or so obvious that it should be known." *Farmer*, 511 U.S. at 836.

In *Leal v. Wiles*, the Fifth circuit applied the *Farmer*'s standard to a case that is extremely similar to the one currently before the court. *Leal*, 734 Fed. Appx. 905. In that case, Alejandro Leal filed a pro se action against jail officials after he was assaulted by rival gang members despite the database, roster, and floor cards all indicating that he should be kept separate from those rival gang members. *Id.* at 910. Leal was attacked when the defendant officials took him out for recreation, left to retrieve other inmates, and inadvertently returned with two members of the rival gang. *Id.* at 906. In dismissing the detainee's complaint, the Fifth circuit applied the subjective approach set out in *Farmer* and held that the detainee failed to show that the official acted with deliberate indifference. *Id.* at 910. It reasoned that, despite information regarding Leal's protected status being available in multiple locations, the fact that the Officer "should have known" does not meet the "high standard" of deliberate indifference. *Id.* The court acknowledged that knowledge may be imputed to an officer when the record indicates that the officer "refused to verify underlying facts that he strongly suspected to be true" but that there were no such facts present. *Id.* at 911. Leal did not sufficiently allege facts that established the obviousness of a risk such that knowledge could be attributed to the officer and "liability attaches only if [the Officer] knew — not merely should have known—about the risk." *Id.*

Here, even if this court were to accept the fact that Campbell "should have known that Shelby was at risk of an attack by rival gang members," as alleged by Shelby, this allegation establishes nothing more than the defendant in *Leal*. (R. at 8). Shelby's complaint did not allege,

and nothing in the record indicates, that Campbell knew of the risk to Shelby at the time of the attack. Shelby also didn't allege anything that would suggest that Campbell strongly suspected that Shelby was at risk but refused to verify those suspicions. Similar to the detainee in *Leal*, Shelby did not allege that Campbell actually viewed the database or intelligence-officer meeting minutes, only that such information was available to Campbell and that he should have viewed it. (R. at 8). Instead, Shelby merely alleges that Campbell "should have been on notice" of the risk to Shelby because of Shelby's information in the database, his inventoried items, and his previous charges. (R. at 8).

Simply because Campbell *could* have checked the information available to him does not mean that he did or that he was deliberately ignoring a risk to Shelby's safety. There is nothing in the record to suggest that Campbell, as a new jail officer serving in a non-intelligence officer capacity, would have been exposed to Shelby's previous charges or inventoried items. (R. at 5). This is not enough to meet the subjective mens rea element for failure-to-protect because "imputed or collective knowledge [like the prison database] cannot serve as the basis for a claim of deliberate indifference. Each individual defendant must be judged separately and on the basis of what that person kn[ew]." *Burnette v. Taylor*, 533 F.3d 1325, 1331 (11th Cir. 2008). Shelby's complaint is also insufficient to establish that other circumstances that Campbell was aware of made the risk to Shelby "so obvious" that subjective knowledge of the risk could be imputed to Campbell. The Eleventh circuit provided a clear example of the circumstances which would make a risk "so obvious" that it meets *Farmer*'s subjective standard in *Nelson v. Tompkins*, 89 F.4th 1289 (11th Cir. 2024). In *Nelson*, the court found that the risk that an inmate would attack a white pretrial detainee after they were moved into the same cell was so obvious because he had stabbed another inmate the day before simply because he was white. *Id.* at 1299.

Shelby may argue that the sufficiency of his complaint, as a pro se complaint, should be considered liberally. However, the failings of Shelby's complaint go beyond merely being "inartfully pleaded." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The complaint relies on *Kingsley*'s objective approach, the wrong mens rea for pretrial detainee deliberate indifference standard and does not allege any facts that meet the level of subjective knowledge. A pro se complaint's "liberal construction stops . . . at the point at which [the court] begin to serve as his advocate" or "rewrite otherwise deficient pleadings." *Moore v. Diggins*, 633 Fed. Appx. 672, 673 (10th Cir. 2015); *Garcon v. United Mut. Of Omaha Ins. Co.*, 779 Fed. Appx. 595, 597 (11th Cir. 2019).

## B. Even If This Court Were to Extend *Kingsley*'s Objective Standard Beyond Claims of Excessive Force, Shelby Has Failed to Allege Sufficient Facts to Meet This Standard.

### 1. The objective standard set out in *Kingsley* requires more than negligence or gross negligence.

Even if this court were to extend the holding of *Kingsley* beyond excessive force claims to failure-to-protect claims raised by pretrial detainees, Campbell's complaint fails to allege sufficient facts to meet this standard. The Due Process Clause was intended to protect individuals from an abuse of power by government officials. *Daniels*, 474 U.S. at 331 (1986). "Far from an abuse of power, lack of due care suggests no more than a failure to measure up to the conduct of a reasonable person." This is exactly what Shelby has alleged, that Campbell failed to live up to the conduct of a reasonable officer by consulting the information that was available to him. (R. at 10). "To hold that injury caused by such conduct is a deprivation within the meaning of the Fourteenth Amendment would trivialize the centuries-old principle of due process of law." *Daniels*, 474 U.S. at 332. Thus, applying an objective mens rea for failure-to-protect does not allow mere negligence to entitle Shelby to relief. "[A]ny § 1983 claim for a violation of due process requires proof of a

mens rea greater than mere negligence . . . [because] negligently inflicted harm is categorically beneath the threshold of constitutional Due Process." *Darnell v. Pineiro*, 849 F.3d 17, 36 (2nd Cir. 2017). Instead, the pretrial detainee must show that the Officer acted with "reckless disregard in the face of an unjustifiably high risk of harm." *Westmoreland v. Bulter Cnty.*, 29 F.4th 721 (6th Cir. 2022); *Brawner v. Scott County, Tennessee*, 14 F.4th 585, 596 (6th Cir. 2021) (the pretrial detainee must prove that the defendant-official . . . recklessly failed to act with reasonable care to mitigate the risk).

To distinguish between what behavior would be considered reckless and what behavior is mere negligence, the Seventh Circuit compared the reckless conduct of two medical care officials with several hypotheticals. *Miranda v. County of Lake*, 900 F.3d 335, 354 (7th Cir. 2018). The court distinguished between making the conscious decision to wait before providing medical services to an inmate they knew was not eating, which a jury could find qualified as reckless disregard of the risk to the inmate's safety, and mixing up the inmate's charts or forgetting that the inmate was in the jail, which qualifies as insufficient negligence. *Id.* Campbell's choice to treat Shelby as a normal detainee, rather than learning about and adhering to Shelby's special status, is more akin to the later hypotheticals. Campbell successfully used the due care necessary to protect Shelby if Shelby was a normal detainee but inadvertently failed to learn of Shelby's special status. Campbell's conduct may support administrative action or state-law liability against Campbell, but it does not rise to the level of a Due Process Clause violation merely because Campbell failed in one aspect of his duty. The Supreme Court held that "the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm." *County of Sacramento v. Lewis*, 523 U.S. 833, 848 (1998).

**2. Campbell's conduct does not rise to the level of recklessness.**

Campbell did not exercise due care when he failed to check the roster and review the meeting minutes. The jail did not exercise due care in failing to ensure that he did. However, those failures do not constitute "reckless disregard in the face of an unjustifiably high risk of harm." *Westmoreland* 29 F.4th at 721. Under *Kingsley*, *"*objective reasonableness turns on the facts and circumstances of each particular case." *Graham v. Connor*, 490 U.S. 386, 396, (1989). Here, the circumstances surrounding Campbell's conduct indicate that he behaved according to how a reasonable officer with his knowledge would have acted and was not reckless in failing to take extra precautions. The Marshal Jail has several gang intelligence officers whose primary responsibilities include remaining apprised of the threat posed to certain inmates because of their gang affiliations. (R. at 4). As specialized officials, it would be reckless for one of those officers to fail to be informed as to the risk posed to an inmate because of the inmate's gang affiliations. However, Campbell was not an intelligence officer, he was an entry-level guard, and his failure to review this information was negligence. (R. at 5).

Although adopting *Kingsley* would remove the burden on pretrial detainees to prove the jail official had subjective knowledge of the risk to the detainee, this Court was careful to state that the objective standard still protects an officer's good faith actions by "judging the reasonableness of [the officer's action] from the perspective and with the knowledge of the defendant officer." *Kingsley*, 576 U.S. at 399. Despite Campbell's negligence in adhering to the jail's gang-related safety procedures, he took steps to ensure Shelby's safety which a reasonable officer with Shelby's knowledge and perspective would ensure Shelby's safety. Those steps included removing Shelby from his cell individually, escorting him to the location set out by procedure, limiting the conversations he has with other inmates, and attempting to break up the fight (R. at 6–7). Nothing that Shelby alleges Campbell actually saw would indicate to a reasonable officer that he should

take additional precautions or consult the roster. Shelby never expressed concern over his safety to Campbell or gave any indication of his gang affiliation, nor did any of the other inmates or officials indicate to Campbell that Shelby required special care. Merely failing to follow a procedure designed to provide additional safety to inmates, without any objective indication to the officer that there is a threat to that inmate's safety, is negligence, not recklessness. To find otherwise would require every jail official to check the roster every time before they interact with any pretrial detainee and ensure that they are aware of the status of every new inmate just to avoid "recklessly" making a mistake regarding the inmate's unique requirements.

To hold that Campbell's conduct constitutes a failure-to-protect that rises to the level of a Due Process violation would obscure the distinction between negligence and the recklessness required under *Kingsley*. In applying the *Kingsley* standard, the Ninth Circuit held that "Neither mere lack of due care, nor an inadvertent failure" is sufficient to qualify as reckless. *Fraihat v. U.S. Immigration and Custom Enforcement*, 16 F.4th 613, 636 (9th Cir. 2021). Finding that Campbell acted recklessly would also allow detainees to bring a failure-to-protect claim every time an inmate or detainee under the supervision of the officer is able to hurt another inmate. That is not what the Due Process Clause was intended to protect against. "[N]ot every injury suffered by a prisoner at the hands of another translates into constitutional liability for prison officials responsible for the victim's safety." *Makdessi v. Fields*, 789 F.3d 126, 133 (4th Cir. 2015).

## CONCLUSION

Shelby's three prior dismissals under Heck v. Humphrey all constituted strikes under the PLRA. The prior dismissals all failed to meet the favorable termination requirement of Heck and were all the type of meritless, wasteful litigation that the PLRA was enacted to prohibit. If claims dismissed under Heck do not terminate in favor of the prisoner, then they count as strikes under

the PLRA. None of Shelby's claims were resolved in his favor because he served out the sentences imposed, therefore the dismissals counted as three strikes for purposes of the PLRA. Additionally, under the burden-shifting test, Shelby failed to show that the three claims should not be counted as strikes after Campbell made his required showing that Shelby failed to state a claim for all three. To prove that the dismissals should not count as strikes, Shelby would have to show that they fell into the imminent danger exception, but he failed to do so. Therefore, all three of Shelby's prior dismissals constituted strikes under the PLRA.

Shelby failed to state a Fourteenth Amendment failure-to-protect claim upon which he is entitled to relief. To be entitled to damages for the failure-to-protect claim, Shelby had to prove that Campbell had subjective knowledge of the danger posed to him and failed to do so. Though this Court discussed an objective test Kingsley, that ruling did not abrogate the subjective test set out by this Court in Farmer because it was only in the context of a claim of excessive force, and it made no mention of failure to protect or Farmer. Excessive force claims are based on an officer's deliberate action whereas failure-to-protect claims are based on an officer's failure to act. There were no facts alleged in this case that would reflect that Campbell intentionally acted in a way to bring harm to Shelby.

Additionally, Shelby failed to prove that Campbell's conduct rose to the level of deliberate indifference to a risk to Shelby's health and safety. No facts in the record reflect that Campbell had actual knowledge of the potential risk to Shelby. To prove that Campbell acted with deliberate indifference and succeed in a claim, Shelby would have to allege facts that show that Campbell knew the risk to him or that the risk was so obvious that the knowledge could be imputed. The record does not reflect that Campbell had actual knowledge. For knowledge to be imputed, the

record would have to reflect that Campbell refused to verify facts that he strongly suggested were true. Shelby failed to allege facts that Campbell strongly suspected there was any threat to Shelby.

Therefore, because all three of Shelby's dismissals failed to meet the favorable termination requirement of Heck v. Humphrey and because Shelby failed to show that the three claims should not be strikes under the burden-shifting test, all three of his prior dismissals constitute strikes under the PLRA. Additionally, because Shelby failed to prove that Campbell had subjective knowledge of the risk posed to Shelby and because Shelby failed to prove that Campbell's conduct rose to the level of deliberate indifference towards the risk of harm to him, Shelby failed to state a failure-to-protect claim upon which relief could be granted. Therefore, this Court should reverse the ruling of the Fourteenth Circuit Court of Appeals.