IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WYTHE

Case No. 23:14-cr-2324

ARTHUR SHELBY,

v.

CHESTER CAMPBELL

ORDER

Michael Gray, District Judge:

Finding that Plaintiff has had three prior cases dismissed pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994), Plaintiff has accrued three "strikes" under the Prison Litigation Reform Act. Thus, Plaintiff is no longer entitled to in forma pauperis status, and this Court **DENIES** Plaintiff's motion to proceed in forma pauperis under 28 U.S.C. § 1915(g). Plaintiff is **DIRECTED** to pay the $402.00 filing fee within 30 days of entry of this order. In the event Plaintiff fails to pay the filing fee by the deadline set forth above, the clerk shall, without further order of the court, terminate all pending motions as moot and enter judgment dismissing this action without prejudice for failure to prosecute.

IT IS THEREFORE ORDERED that Plaintiff's motion to proceed in forma pauperis is hereby **DENIED**.

Is it so ordered.

Signed: April 20, 2022

/s/ Michael Gray

Michael Gray
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WYTHE

Case No. 23:14-cr-2324

ARTHUR SHELBY,

v.

CHESTER CAMPBELL

MEMORANDUM OPINION AND ORDER

Michael Gray, District Judge:

Plaintiff Arthur Shelby brought this 42 U.S.C. § 1983 claim against Officer Chester Campbell in his individual capacity. Defendant Chester Campbell filed a Rule 12(b)(6) Motion to Dismiss for failure to state a claim. For the following reasons, Defendant's Motion to Dismiss is GRANTED.

STATEMENT OF FACTS

Arthur Shelby is the second-in-command of the infamous street gang, the Geeky Binders. According to local lore in the town of Marshall, the Geeky Binders' namesake was established when the gang's leading founder, Brendan Alex Davidson, escaped from custody after boring an entire courtroom into a comatose state. Proceeding pro se while on trial for murder, Davidson recited an endless number of law review articles during his closing argument. Taking advantage of the guards' dormant state, Davidson beat them to death with binders full of case law before making his escape. Since then, the Geeky Binders have developed sophisticated techniques of torturing their enemies using sharp awls that they conceal inside custom-made, engraved ballpoint pens.

The Geeky Binders historically owned the town of Marshall, with members of the crime syndicate running various businesses, owning much of the real estate, and even holding public office. Shelby has had several run-ins with the law, including arrests and subsequent convictions for crimes such as drug distribution and possession, assault, and brandishing a firearm. As a result, Shelby has been in and out of prison for the last several years. During his prior detention, Shelby commenced three separate civil actions under 42 U.S.C. § 1983 against prison officials, state officials, and the United States. Because the actions would have called into question either his conviction or his sentence, each action was dismissed without prejudice pursuant to *Heck v. Humphrey*.

The Geeky Binders suffered a great fall in authority in Marshall over the last several years with the takeover of a rival gang led by Luca Bonucci. Several Marshall police officers and Marshall jail officials have been accused and charged with accepting bribes from members of the Bonucci clan, and the Bonuccis have exercised considerable power over local politicians and other important Marshall officials. Bonucci's bribing power soon ran out; he is currently held at the Marshall jail on assault and armed robbery charges, along with several other members of the Bonucci clan. The Marshall jail recently fired many of the officers who were involved in the Bonucci clan's illegal activity and hired new officers untainted by Bonucci's authority. Even so, Bonucci and his clan still exercise considerable power over Marshall, even from jail.

On New Year's Eve, December 31, 2020, Marshall police raided a boxing match that Shelby and his brothers were attending. Police had warrants for the arrest of the three lead members of the Geeky Binders, Thomas Shelby (the current leader of the Geeky Binders), Arthur Shelby, and John Shelby, for battery, assault, and a slew of firearms offenses. Thomas and John evaded the police, however, Arthur, under the influence of alcohol and several drugs, failed to escape. Police

placed Arthur Shelby under arrest, and charged Shelby with battery, assault, and possession of a firearm by a convicted felon. Officers subsequently held Shelby at the Marshall jail.

A seasoned jail official, Dan Mann, booked Shelby and conducted his preliminary paperwork. Officer Mann immediately recognized that Shelby was a member of the Geeky Binders. First, Shelby entered the jail in a distinct outfit: a tweed three-piece suit, a long overcoat, and most significantly, he possessed a custom-made ballpoint pen with an awl concealed inside and with "Geeky Binders" engraved on the outside. The booking officer inventoried all of Shelby's belongings using the Marshall jail's online database, making a special note to indicate that Shelby arrived at the jail with a weapon, the awl in the pen. Next, while still under the influence, Shelby made several comments to the booking officer, including: "The cops can't arrest a Geeky Binder!" and "My brother Tom will get me out of here, just you wait."

All officers at the Marshall jail are required to make both paper and digital copies of the forms to file and upload in the jail's online database. The online database contains a file for each inmate that lists each inmate's charges, inventoried items, medications, gang affiliation, and other pertinent statistics and data that jail officials would need to know. The gang affiliation subset of the page proves particularly important in the Marshall jail because of the town's high gang activity; the database allows officers to indicate not only an inmate's gang affiliation, but also list any known hits placed on the inmate and any gang rivalries. Because of the town's substantial gang activity, the Marshall jail had several gang intelligence officers who reviewed each incoming inmate's entry in the online database.

Officer Mann followed protocol when entering Shelby's paperwork. While he was in the database, Mann noticed that Shelby already had a page in the database from his previous arrests and stays at the jail. Although Officer Mann had to open a new file to see the data relating to

Shelby's previous arrests, the database clearly displayed Shelby's gang affiliation and other identifying information on the separate file. Mann properly recorded all of Shelby's current information, including notations of Shelby's statements, under the gang affiliation tab. Once Officer Mann finished Shelby's booking procedures around 11:30 PM, Mann turned Shelby over to other jail officials who placed Shelby in a holding cell apart from the main area of the jail.

The gang intelligence officers reviewed and edited Shelby's file on the online database, paying special attention because of Shelby's high-ranking status. The intelligence officers knew of a recent dispute between the rival gangs resulting from Thomas Shelby's murder of Bonucci's wife. The intelligence officers were aware that the Bonuccis were seeking revenge on the Geeky Binders and had heard that Arthur Shelby in particular was a prime target for the gang. The intelligence officers made a special note in Shelby's file and printed out paper notices to be left at every administrative area in the jail. Shelby's status was also indicated on all rosters and floor cards at the jail. Most significantly, the intelligence officers held a meeting with all jail officials the morning after Shelby had been booked, notifying each officer of Shelby's presence in the jail. At the meeting, the intelligence officers told the other officers that Shelby would be housed in cell block A of the jail and that the Bonuccis were dispersed between cell blocks B and C. The intelligence officers reminded everyone to check the rosters and floor cards regularly to ensure that the rival gangs were not coming in contact in common spaces in the jail.

Officer Chester Campbell is an entry-level guard at the Marshall jail. Although new at the job, he had been trained properly by the Marshall jail and had been meeting job expectations for the several months he had been employed. Officer Campbell was not a gang intelligence officer. On January 1, 2021, roll call records indicated that Officer Campbell attended the meeting hosted by the gang intelligence officers, but the jail's time sheets indicated that Officer Campbell had

called in sick that morning and did not arrive at work until later that afternoon after the meeting had ended. The gang intelligence officers required anyone absent from the meeting to review the meeting minutes on the jail's online database. Ordinarily, the database indicates if an officer or official has viewed a specific page or file, but a glitch in the system wiped any record of any person who viewed the meeting minutes for the January 1 meeting.

On January 8, 2021, a little over one week after Shelby's booking, Officer Campbell oversaw the transfer of inmates to and from the jail's recreation room. Officer Campbell approached Shelby's cell and asked Shelby if he wanted to go to recreation. Shelby responded in the affirmative. Officer Campbell did not know or recognize Shelby at the time of their meeting.[1] Officer Campbell did not reference the hard copy list of inmates with special statuses that he was carrying, nor did he reference the jail's database before taking Shelby from his cell. The list Officer Campbell carried with him included inmates with special medical needs; inmates who had previously shown violent tendencies or were found with a weapon inside the jail; and inmates with gang affiliations and their corresponding risk of attack from other gang members in the jail. The list explicitly included Shelby's name, indicating that a possible hit had been ordered on Shelby by Bonucci and that Shelby was at risk of attack by members of the Bonucci clan.

Nonetheless, Officer Campbell retrieved Shelby from his cell and led him to the guard stand to wait for other inmates to be gathered for recreation. On their walk to the guard stand, another inmate in cell block A yelled out to Shelby: "I'm glad your brother Tom finally took care of that horrible woman." Shelby responded, "yeah, it's what that scum deserved." Officer Campbell told Shelby to be quiet, then collected one other inmate from cell block A. Officer

[1] It is not in dispute that at the time Shelby and Officer Campbell met, Shelby was already charged with several offenses and was formally considered a pretrial detainee.

Campbell then retrieved two inmates from cell block B and one from cell block C; all three of these inmates were members of the Bonucci clan. As they approached, Shelby moved behind the other inmate from cell block A. Unfortunately, the Bonucci clan inmates immediately charged Shelby, beating him with their fists. One Bonucci clan inmate carried a club he made from tightly rolled and mashed paper, hitting Shelby over the head and in the ribs with the object. Officer Campbell attempted to break up the attack but could not hold the three men back. The attack lasted for several minutes until other officers arrived to assist Officer Campbell.

Shelby suffered serious injuries. Following an extended hospital visit, doctors identified that Shelby had suffered life-threatening injuries, including penetrative head wounds from external blunt force trauma resulting in traumatic brain injury. He also suffered fractures of three different ribs, lung lacerations, acute abdominal edema and organ laceration, and internal bleeding. Shelby remained in the hospital for several weeks as a result of his injuries.

Following a bench trial, Shelby was acquitted of the assault charge, but was found guilty as charged of battery and possession of a firearm by a convicted felon. He is currently imprisoned at Wythe Prison.

PROCEDURAL POSTURE

Shelby filed this 42 U.S.C. § 1983 action pro se against Officer Campbell in his individual capacity on February 24, 2022. Shelby filed within the statute of limitations. Alongside his Complaint, Shelby filed a motion to proceed in forma pauperis, which this Court denied pursuant to 28 U.S.C. § 1915(g) on April 20, 2022, because Shelby had accrued three "strikes" under the PLRA. This Court directed Shelby to pay the $402.00 filing fee before proceeding, which Shelby paid in full. In his Complaint, Shelby alleges that Officer Campbell violated his constitutional rights when he failed to protect Shelby, a pretrial detainee at the time of the attack. Shelby alleges

that he is entitled to damages under 42 U.S.C. § 1983. Officer Campbell filed the present Motion to Dismiss on May 4, 2022, only arguing that Shelby failed to state a claim.

DISCUSSION

Shelby alleges in his Complaint that because of his pretrial detainee status at the time of the attack and under the objective standard established in *Kingsley v. Hendrickson*, Officer Campbell's actions were "objectively unreasonable." 576 U.S. 389, 397 (2015). According to Shelby, Officer Campbell should have known that Shelby was at risk of an attack by rival gang members given the availability of information to Officer Campbell. Specifically, Shelby contends that Officer Campbell should have been on notice of the risk he faced from all the information on the database, which included his gang status, at-risk status, inventoried items, and his previous charges.

Officer Campbell argues in his Motion to Dismiss that to be held liable under a failure-to-protect claim, an official must know of and disregard "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." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). In other words, the officer must have subjective, actual knowledge of the risk to inmate safety to be held liable in deliberate indifference claims like failure-to-protect claims. Officer Campbell urges that 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. For the following reasons, this Court holds that the subjective standard applies in pretrial detainees' failure-to-protect claims. Thus, Shelby has failed to allege facts suggesting that Officer Campbell had a sufficiently culpable state of mind.

Under the Eighth Amendment, prisoners cannot be punished cruelly or unusually. U.S. Const. amend. VIII. Beginning with *Estelle v. Gamble* and affirmed by *Farmer*, 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. *See Estelle v. Gamble*, 429 U.S. 97, 102–06 (1976) (holding an officer's deliberate indifference to a prisoner's medical needs constitutes cruel and unusual punishment under the Eighth Amendment); *Farmer*, 511 U.S. at 835 (holding an officer must know an inmate faces substantial risk of serious harm and disregards that risk to be held liable under the Eighth Amendment).

Because Shelby was a pretrial detainee at the time of the attack, his § 1983 claim arises from the protections of the Fourteenth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535–37 & n.16 (1979) (recognizing that claims by pretrial detainees are scrutinized under the Fourteenth Amendment Due Process Clause). In accordance with due process of law, pretrial detainees like Shelby cannot be punished *at all* prior to an adjudication of guilt. U.S. Const. amend. XIV. Without actual knowledge of Shelby's at-risk status, Officer Campbell did not punish Shelby prior to an adjudication of guilt by inadvertently placing Shelby with members of the Bonucci clan.

In the failure-to-protect context, *Farmer* controls, and *Kingsley* did not alter this framework. Though the exact nature of the underlying constitutional right may differ between pretrial detainees and prisoners, the subjective inquiry serves the same purpose. The inquiry helps delineate whether an official's actions were merely a result of an official's negligence, or resulted from an intentional act, serving as punishment. *See Farmer*, 511 U.S. at 839. Deliberate indifference "describes a state of mind more blameworthy than negligence." *See id.* at 835. If this Court were to adopt an objective standard to measure Officer Campbell's state of mind, it would

transform the inquiry into one of negligence: whether Officer Campbell failed to act as a reasonable person under the same circumstances in failing to recognize the risk to Shelby.

Post-*Kingsley*, the Eleventh Circuit, as well as several others, have continued to provide the same Eighth Amendment protections to pretrial detainees, treating both prisoners and pretrial detainees identically when evaluating the subjective component of deliberate indifference claims. *Nam Dang ex rel. Vina Dang v. Sheriff, Seminole County Florida*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) (distinguishing *Kingsley*'s objective standard for excessive force claims from claims of inadequate medical treatment); *see, e.g.*, *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018) (distinguishing *Kingsley*'s objective standard for excessive force claims from failure-to-protect against suicide claims). The Fourteenth Circuit has yet to extend *Kingsley* to failure-to-protect claims, and we decline to do so today. Accordingly, the proper inquiry for evaluating deliberate indifference claims like failure-to-protect claims by pretrial detainees is "whether those conditions amount to punishment." *See Bell*, 441 U.S. at 535 (adopting a subjective standard to analyze claims by pretrial detainees).

Thus, Shelby must allege that Officer Campbell knew of and disregarded a substantial risk of serious harm. *Farmer*, 511 U.S. at 837. "Deliberate indifference is an extremely high standard to meet," and Shelby has failed to do so here. *Leal v. Wiles*, 734 F. App'x 905, 910 (5th Cir. 2018) (internal citations omitted). The Complaint alleges that whether Officer Campbell attended the meeting with the gang intelligence officers or not, Officer Campbell still had access to all the notices relaying Shelby's status. Shelby further alleges that Officer Campbell was required to attend the meeting or review the minutes. Thus, Shelby contends that Officer Campbell should have had knowledge of his at-risk status but failed to take proper precautions.

Shelby's assertions fail to arise to the proper standard. Nothing in the record suggests Officer Campbell had actual knowledge of Shelby's gang affiliation. The Complaint makes no mention of Officer Campbell looking at the special risks list before retrieving Shelby. No allegation suggests that Officer Campbell had actual knowledge about the possible sanctioned hit on Shelby. As tragic as the facts of Shelby's case are, at most, Shelby's Complaint alleges that Officer Campbell was negligent in his work by failing to check the lists provided to him.

CONCLUSION

Accordingly, for the reasons stated above, this Court **GRANTS** Defendant's Motion to Dismiss.

Is it so ordered.

Signed: July 14, 2022

/s/ Michael Gray

Michael Gray
District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

No. 2023-5255

ARTHUR SHELBY,

Appellant

v.

CHESTER CAMPBELL,

Appellee

Appeal from the United States District Court for the Western District of Wythe.

Argument submitted December 1, 2022.

Before Alfred SOLOMONS, Elizabeth STARK, and Ada THORNE, Circuit Judges.

OPINION

STARK, Judge, joined by THORNE, Judge:

This is an appeal from Plaintiff-Appellant Arthur Shelby following the United States District Court for the Western District of Wythe's denial of Appellant's motion to proceed in forma pauperis and subsequent dismissal of his 42 U.S.C. § 1983 case against Defendant-Appellee Chester Campbell for failure to state a claim.

The issues before this Court are (1) does dismissal of a prisoner's civil action under *Heck v. Humphrey* constitute a "strike" within the meaning of the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915, and (2) does *Kingsley v. Hendrickson* 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? We **REVERSE AND REMAND** on both issues.

FACTUAL AND PROCEDURAL HISTORY

The District Court's recitation of the facts indicated in the Complaint are thoroughly discussed in its opinion below, and that rendering of the facts are accepted here. Shelby timely filed his 42 U.S.C. § 1983 claim in federal court on February 24, 2022. That same day, he filed a motion to proceed in forma pauperis. On April 20, 2022, the District Court denied Shelby's motion to proceed in forma pauperis, citing the PLRA's three-strike provision, 28 U.S.C. 1915(g). The order denying Shelby's motion also directed him to pay the $402.00 filing fee, which Shelby paid within the thirty-day deadline set by the District Court.[2] On July 14, 2022, the District Court granted Officer Campbell's 12(b)(6) Motion to Dismiss for failure to state a claim, holding that Shelby failed to allege sufficient facts suggesting that Officer Campbell had actual knowledge of Shelby's gang affiliation and resulting risk of bodily harm. Shelby timely filed his appeal on July 25, 2022, and this Court subsequently appointed Shelby counsel on August 1, 2022.

He appeals the District Court's denial of his motion to proceed in forma pauperis, arguing that a dismissal pursuant to *Heck v. Humphrey* does not serve as a "strike" under the PLRA. He also appeals the dismissal of his case for failure to state a claim, arguing that the lower court erred in applying the subjective deliberate indifference standard to his failure-to-protect claim and instead should have applied the objective standard as established in *Kingsley*.

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[2] Given that Shelby has appealed the District Court's denial of his motion to proceed in forma pauperis, this Court issued an order allowing Shelby to proceed in forma pauperis on appeal subject to our assessment of this issue.

DISCUSSION

I. Dismissals Under *Heck v. Humphrey* Do Not Constitute a "Strike" Pursuant to 28 U.S.C. § 1915(g).

First, this Court must determine whether dismissals under *Heck v. Humphrey* automatically constitute "strikes" pursuant to the PLRA's three strikes provision, codified at 28 U.S.C. § 1915(g). The PLRA's three strikes provision bars prisoners who have gained "three strikes" from filing in forma pauperis. Plaintiffs accumulate a "strike" every time "an action or appeal in a court of the United States that was 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." 28 U.S.C. § 1915(g).

The Supreme Court in *Heck v. Humphrey* 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). Thus, district courts must dismiss without prejudice § 1983 claims brought before a conviction or sentence has been invalidated. For the following reasons, this Court holds that a *Heck* dismissal does not constitute a failure to state a claim under the PLRA, therefore, *Heck* dismissals do not automatically count as "strikes."

In *Heck*, the Court explained that "when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . ." *Heck*, 512 U.S. at 487. Likening such claims to claims for malicious prosecution, the Court held that where a successful § 1983 action would imply the invalidity of a conviction or sentence, a district court must dismiss the complaint until

the prisoner is able to show that the conviction or sentence has been invalidated. *See id.* at 489–90. When the prisoner can show that the conviction or sentence has been invalidated, then the cause of action "accrues." *Id.*

Favorable termination is not an element that a prisoner must allege in his or her complaint under § 1983; *Heck* only temporarily prevents courts from addressing the underlying merits of the inmate's § 1983 claim. Indeed, the "*Heck* doctrine is not a jurisdictional bar," and functions more as an affirmative defense that is "subject to waiver." *Polzin v. Gage*, 636 F.3d 834, 837–38 (7th Cir. 2011). As the Seventh Circuit in *Polzin* acknowledged, "courts may bypass the impediment of the *Heck* doctrine and address the merits of the case." *Id.* at 838; *see also Washington v. Los Angeles County*, 833 F.3d 1048, 1055 (9th Cir. 2016) (holding that a *Heck* dismissal, "standing alone, is not per se 'frivolous' or malicious.'").

The Ninth Circuit acknowledged that *Heck* dismissals may, in some circumstances, constitute Rule 12(b)(6) dismissals for failure to state a claim, but only if the pleadings present an "obvious bar to securing relief." *Washington*, 833 F.3d at 1055–56 (internal citations omitted). But favorable termination is not a "necessary element of a civil damages claim under § 1983," and instead, *Heck* dismissals are simply a matter of "judicial traffic control." *Id.* at 1056.

Congress passed the PLRA and the three strikes rule in attempts to curb meritless, wasteful litigation brought by prisoners. Ultimately, *Heck* recognizes the prematurity, not the invalidity, of a prisoner's claim. Therefore, the District Court erred in counting Shelby's prior *Heck* dismissals as "strikes" under the PLRA.

II. Under *Kingsley v. Hendrickson*, Failure-To-Protect Claims Must be Analyzed Using an Objective Standard.

Whether a subjective or objective standard applies to § 1983 failure-to-protect claims is a matter of first impression in the Fourteenth Circuit. Following the Supreme Court's decision in *Kingsley v. Hendrickson*, circuit courts have split as to whether the objective reasonableness standard the Court established in *Kingsley* for excessive force claims by pretrial detainees extends to other claims by pretrial detainees, such as failure-to-protect, conditions of confinement, and inadequate medical care claims. The deliberate indifference standard functions as a subjective test, requiring an officer or an official to have actual knowledge of the risk to the detainee. The *Kingsley* objective reasonableness standard, however, only requires that a reasonable officer should have known of the risk to the detainee. Several circuits have held that *Kingsley*'s objective standard applies beyond pretrial detainees' excessive force claims, while others have declined to extend *Kingsley*, instead applying the subjective deliberate indifference standard. Today, this Court joins our sister circuits in holding that *Kingsley*'s objective standard extends beyond excessive force claims and to failure-to-protect claims like Shelby's.

The Court made clear in *Kingsley* that no single "deliberate indifference" standard applied to all § 1983 claims, no matter the claimant's status at the time of the constitutional harm. *See* 576 U.S. 389, 400–01 (2015) (recognizing that the Eighth Amendment and Fourteenth Amendment provide different constitutional protections). Under the Fourteenth Amendment, pretrial detainees are afforded stronger constitutional protections than convicted prisoners under the Eighth Amendment. *Id.* at 400; *Bell v. Wolfish*, 441 U.S. 520, 535–37 & n.16 (1979). As the Fourteenth Amendment mandates, pretrial detainees may not be punished *at all* prior to a determination of guilt, "much less 'maliciously and sadistically.'" *Kingsley*, 576 U.S. at 400 (internal citations omitted). Unlike Eighth Amendment violations, an official can violate a detainee's Fourteenth

Amendment rights without "meting out any punishment." *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) (explaining that an official can violate the Due Process Clause with no subjective knowledge of a risk of harm).

As the Court delineated in *Kingsley*, two separate state of mind questions are at play in pretrial detainees' § 1983 claims. The first inquiry is subjective, while the second inquiry is objective. *Kingsley*, 576 U.S. at 395. There is no question in excessive force claims that a subjective standard applies with respect to the physical force applied by an officer. *Id.* This standard applies as to physical force only because "liability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process." *Id.* at 395–96 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)) (explaining that a Plaintiff must still prove that the officer had a purposeful, knowing state of mind for the physical acts like pushing or punching, for example). The *Kingsley* Court provided examples in which an officer would not be held liable, including if a taser goes off unintentionally or if an officer trips and injures a detainee, causing harm. *Id.* at 396.

In this case and in other failure-to-protect claims, the issue is typically an officer's inaction rather than action. Thus, the equivalent analysis must center around whether the officer's conduct with respect to the plaintiff was intentional. *See Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (holding in a failure-to-protect claim that an objective standard applies). For example, "if the claim relates to housing two individuals together, the inquiry at this step would be whether the placement decision was intentional." *Id.* In this case, the act to be examined is Officer Campbell's placing of several detainees in the same area to await transfer to recreation. Officer Campbell's acts in doing so prove intentional, as no outside force, illness, or accident rendered Officer Campbell unable to make this conscious decision.

Then, under *Kingsley*, the second question presented in the failure-to-protect context would be objective: "Was there a substantial risk of serious harm to the plaintiff that could have been eliminated through reasonable and available measures that the officer did not take, thus causing the injury that the plaintiff suffered?" *Id.*; *see also Kingsley*, 576 U.S. at 396–97. No proof of the officer's actual awareness of the level of risk is required under *Kingsley*. A detainee asserting a due process failure-to-protect claim must allege something more than negligence, but less than subjective intent—"something akin to reckless disregard." *Castro*, 833 F.3d at 1071.

The elements of a pretrial detainee's Fourteenth Amendment failure-to-protect claims are as follows: (1) The official "made an intentional decision with respect to the conditions under which plaintiff was confined;" (2) "Those conditions put the plaintiff at substantial risk of suffering serious harm;" and (3) "The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved . . ." *Id.*; *see also Darnell*, 849 F.3d at 35–36 (framing the objective standard for a conditions of confinement claim as when an officially recklessly failed to act); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352–54 (7th Cir. 2018) (adopting the reasoning of the Second and Ninth Circuits).

In this case, Officer Campbell acted in an objectively unreasonable manner. Not only did the gang intelligence officers hold a separate meeting to put the officers on notice of the special circumstances surrounding Shelby's safety, but Officer Campbell had access to a wealth of preventative information. Officer Campbell failed to recognize all the warning signs around him, including Shelby's detailed files on the database, Shelby and the other inmate's statements that Officer Campbell heard, and the list of at-risk inmates that Officer Campbell carried with him while completing his tasks. Shelby adequately alleged all this information in his Complaint. He

alleged facts to suggest that Officer Campbell intentionally placed Shelby with other inmates while waiting for recreation. Shelby also alleged facts that suggest that the conditions Officer Campbell placed him in presented a risk of suffering serious harm. Finally, Shelby properly alleged that Officer Campbell failed to take reasonable measures to abate the risk even though any reasonable officer would have acted otherwise. Thus, the District Court's decision must be reversed and remanded.

CONCLUSION

We **REVERSE AND REMAND** the District Court's decision on both issues.

SOLOMONS, Judge, dissenting:

Kingsley's holding as to excessive force did not, and does not, abrogate the subjective component of Fourteenth Amendment deliberate indifference claims. *Kingsley* addressed the narrow question of whether "to prove an *excessive force claim*, a pretrial detainee must show that the officers were subjectively aware that their *use of force* was unreasonable, or only that the officers' use of that force was objectively unreasonable." *Kingsley v. Hendrickson*, 576 U.S. 389, 391 (2015) (emphasis added). In fact, the Court never referenced, alluded to, or cited *Farmer v. Brennan*, the flagship case on the subjective deliberate indifference standard. Interpreting *Kingsley*'s general pronouncements on excessive force claims to require altering decades of established precedent is contrary to "all traditions of our jurisprudence." *RAV v. City of St. Paul*, 505 U.S. 377, 386 n.5 (1992); *cf. Crandell v. Hall*, 75 F.4th 537, 544 (5th Cir. 2023) (discussing how *Kingsley* did not abrogate the circuit's deliberate indifference standard). Indeed, considering "the law on this point conclusively resolved by broad language in cases where the issue was not presented or even envisioned" seems to put the cart before the horse. *RAV*, 505 U.S. at 386 n.5.

As the District Court correctly identified, the Eighth Amendment subjective standard applies to pretrial detainees because it produces identical results as the "punishment" standard articulated in *Bell v. Wolfish*. 441 U.S. 520, 535–36 (1979). The Fourteenth Amendment affords pretrial detainees the right to be free from any *punishment*, not the right to be free from harm that may result from mistakes or oversight from officers as the majority has decided. *Cf. id.*

Even so, excessive force claims have a unique nature separate and apart from failure-to-protect claims. When an official acts deliberately in a manner that proves to be "excessive in relation" to any "legitimate governmental objective," one can infer that those affirmative acts constitute punishment. *Kingsley*, 576 U.S. at 398. Failure-to-protect claims, on the other hand, depend primarily on inadvertent failures to act rather than affirmative actions. One cannot inflict punishment by way of accident. Thus, "a person who unknowingly fails to act—even when such a failure is objectively unreasonabl[e]—is negligent at most." *Castro v. County of Los Angeles*, 833 F.3d 1060, 1086 (9th Cir. 2016) (en banc) (Ikuta, J., dissenting). As the Court reminded us in *Kingsley*, "liability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process." *Kingsley*, 576 U.S. at 396 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)); *see also Leal v. Wiles*, 734 F. App'x 905, 910 (5th Cir. 2018); *Strain v. Regalado*, 977 F.3d 984, 997 (10th Cir. 2020).

Officer Campbell did not have actual knowledge of Shelby's gang status; at most, Officer Campbell negligently brought both Shelby and the Bonucci inmates together. The Fourteenth Amendment does not provide protection against negligent acts, only acts made with the intent to punish a pretrial detainee. As such, the subjective deliberate indifference standard serves as the proper standard for assessing § 1983 failure-to-protect claims.

Respectfully, I dissent.

No. 23-05

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2023

CHESTER CAMPBELL,

Petitioner,

v.

ARTHUR SHELBY,

Respondent.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petition for certiorari to the Fourteenth Circuit Court of Appeals filed by the Chester Campbell is hereby GRANTED.

The Court certifies for argument the following two questions:

1. Does dismissal of a prisoner's civil action under *Heck v. Humphrey* constitute a "strike" within the meaning of the Prison Litigation Reform Act?
2. Does this Court's decision in *Kingsley* 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?