No. 20-cv-20408

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOHN ANTHONY BUCHANAN,

Plaintiff-Appellant

v.

HARRIS COUNTY SHERIFF'S OFFICE,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

BRIEF OF AMICI CURIAE DISABILITY RIGHTS TEXAS, DISABILITY RIGHTS LOUISIANA, DISABILITY RIGHTS MISSISSIPPI SUPPORTING PLAINTIFF-APPELLANT

Brian East
State Bar No. 06360800
DISABILITY RIGHTS TEXAS
2222 W. Braker Lane
Austin, TX 78758
Tel: (512) 407-2718
beast@disabilityrightstx.org

Ronald Lospennato
LA Bar No. 32191
DISABILITY RIGHTS LOUISIANA
8325 Oak Street
New Orleans, LA 70118
Tel: (504) 522-2337
rlospennato@advocacyla.org

Richard D. Salgado
Dan Syed
Michael J. Murtha
Kelsey L. Smith
JONES DAY
2727 N. Harwood St.
Dallas, TX 75201
Tel: (214) 969-5209

Counsel For Amici Curiae
Disability Rights Texas,
Disability Rights Louisiana, **and**
Disability Rights Mississippi

SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 29.2, I hereby certify that in addition to the persons and entities listed in the Appellant's Certificate of Interested Persons, the following persons and entities have an interest in the outcome of the case under Rule 28.2. These representations are made so judges may evaluate potential recusal.

Amici Curiae

Disability Rights Texas
Disability Rights Louisiana
Disability Rights Mississippi

Counsel for Amici Curiae

Jones Day
Richard D. Salgado
Dan Syed
Michael J. Murtha
Kelsey L. Smith

Disability Rights Texas
Brian East

Disability Rights Louisiana
Ronald Lospennato

Disability Rights Mississippi
Greta Martin

Dated: February 12, 2021

/s/ Dan Syed
Dan Syed

STATEMENT REGARDING ORAL ARGUMENT

Disability Rights Texas, Disability Rights Louisiana, and Disability Rights Mississippi—organizations dedicated to protecting the rights of individuals with disabilities in the Fifth Circuit, including inmates such as John Anthony Buchanan—respectfully request oral argument to assist the Court in resolving important issues presented in this case.

This case presents a complex statutory interpretation issue that has broad implications. The Court's current standard results in legal error on a threshold issue under the Prison Litigation Reform Act, shutting down at the outset the claims of many inmates who allege injury. That standard lacks a valid basis because the Supreme Court has since intervened and swept away the foundation for the Fifth Circuit's standard. This Court, however, has yet to revisit its approach in light of the Supreme Court's precedent. The result is the continued and wrongful threshold denial of injury claims such as those presented in this and other cases, as well as the existence of a growing intra-circuit and even intra-district split among some district courts. Oral argument will significantly aid the Court in resolving this issue, which, in turn, will significantly affect the rights of those whose interests Disability Rights Texas, Disability Rights Louisiana, and Disability Rights Mississippi seek to protect.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES
Continued

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
Continued

Page

TABLE OF AUTHORITIES
Continued

Page

STATUTES

OTHER AUTHORITIES

TABLE OF AUTHORITIES
Continued

Page

STATEMENT OF INTEREST OF AMICI CURIAE[1]

Disability Rights Texas ("DRTX") is the federally-designated legal protection and advocacy agency for people with disabilities in Texas. DRTX's mission is to help people with disabilities understand and exercise their rights under the law and ensure their full and equal participation in society. DRTX accomplishes its mission by providing direct legal assistance to people with disabilities, protecting the rights of people with disabilities through the courts and justice system, and educating and informing policymakers about issues that impact the rights and services for people with disabilities. A significant portion of DRTX's work is representing inmates with disabilities throughout the state of Texas to secure appropriate accommodations at correctional facilities. DRTX is interested in this matter because the Court's decision will impact the legal rights of a significant number of people with disabilities along with the remedies available when a person or entity violates the Americans with Disabilities Act.[2]

---

[1] Amici Curiae file this brief with consent of Plaintiff-Appellant John Buchanan. Because Defendant-Appellee has not been served or appeared, the clerk of court confirmed this brief is in compliance with Federal Rule of Appellate Procedure 29(a)(2) via telephone.

[2] Federal Rule of Appellate Procedure 29(a)(4) Statements

No party's counsel authored the brief in whole or in part;

No party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and

No person—other than the amici curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

The State of Louisiana receives funding from the federal government and in return must designate a protection and advocacy system for people with disabilities pursuant to multiple federal statutes. Disability Rights Louisiana ("DRLA") has been Louisiana's P&A system since 1978. Consistent with federal law, DRLA has authority to pursue legal and administrative remedies to protect and advocate for the rights of persons with disabilities. In exercising that authority, DRLA's core mission is to ensure that the rights guaranteed under law to persons with disabilities are protected, and that they are free from neglect, abuse, and exploitation. In its over 40 years of existence, DRLA has provided direct legal assistance to thousands of persons with disabilities and their families throughout Louisiana and has utilized its extensive experience in educating policy makers about issues that impact the rights and services for people with disabilities.

Since 1982, Disability Rights Mississippi ("DRMS") has provided advocacy services to Mississippians with disabilities. DRMS has helped improve the lives of thousands of Mississippi's most vulnerable population by championing their rights. DRMS is the only disability advocacy agency in Mississippi with attorneys on staff to pursue legal remedies if necessary. The core mission of DRMS is to promote, protect, and advocate for the legal and human rights of all people with disabilities, and to assist them with full inclusion in home, community, education and employment.

SUMMARY OF ARGUMENT

Appellant John Buchanan is an inmate with disabilities who raises serious allegations against the Harris County Jail based on his treatment while in pretrial detention. *See* Opening Br. of Appellant at 4. Yet the district court—as has become common practice among district courts in the Fifth Circuit, *see id.* at 57 n. 15 (listing recent similar dismissals)—rejected the prisoner's claims at the outset based on a misapplication of the Prison Litigation Reform Act ("PLRA") as requiring a "more than de minimis" physical injury to recover compensatory damages.

1. The precedent on which the district court relies is no longer good law. The district court was trying to follow *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997), in which the Court adopted the Supreme Court's de minimis standard for excessive *force*—set forth in *Hudson v. McMillian*, 503 U.S. 1, 10 (1992)—as its standard for physical *injury* under the PLRA. But the Supreme Court has since rejected that use of the standard as "indefensible," finding that the Fourth Circuit had "strayed from the clear holding" in *Hudson* by applying the de minimis standard to physical *injury*. *Wilkins v. Gaddy*, 559 U.S. 34, 36 (2010). No meaningful distinction can be drawn here. Because the Supreme Court already swept away *Siglar*'s foundation, this panel can and should set it aside without *en banc* review.

Siglar collapses without *Hudson* setting the floor for what is a significant enough physical injury under the PLRA because there is no other possible reason to require a "more than de minimis" physical injury. The PLRA itself certainly never mentions or

even implies such a standard, requiring only "a prior showing of physical injury . . . ." 42 U.S.C. § 1997e(e). "Physical injury" is not qualified anywhere in the text of the statute. And the ordinary meaning of the words compels the conclusion that "physical injury" should not be qualified by extra-textual language.

A de minimis standard is especially unworkable when applied to inmates with disabilities, who often require special accommodations and more frequent healthcare. Indeed, courts recognize and accommodate the unique needs of prisoners with disabilities in the ADA and Rehabilitation Act contexts. But when courts impose a de minimis standard to the "physical injury" requirements of the PLRA, they reject the otherwise customary inmate-by-inmate approach for an unworkable standard that ignores the needs of those with disabilities.

2. While legally incorrect at even its most basic-level, the de minimis standard has also drifted even farther off-course through the rulings of other district courts that were never corrected by this Court—and that now form a body of erroneous yet technically persuasive district court authority. At a minimum, the Court's intervention is required to reset that shift.

Specifically, in *Luong v. Hatt*, 979 F. Supp. 481, 486 (N.D. Tex. 1997), the Northern District of Texas further heightened the standard by restricting the definition of "physical injury" to "an observable or diagnosable medical condition requiring treatment by a medical care professional." *Id.* at 486. Unsupported by anything in the text of the PLRA, this tougher standard fails to recognize that a de minimis injury to a

healthy inmate could be a life threatening injury to one with disabilities. Thus, the *Siglar* de minimis standard, as shaped by *Luong* and other district courts following its lead, improperly eviscerates safeguards for inmates with disabilities. This Court should reject the de minimis standard and align its PLRA jurisprudence with the ADA and Rehabilitation Act.

3. Finally, in any event, Buchanan's injuries were more than de minimis. In holding otherwise, the district court ignored record evidence showing Buchanan's great pain and need for medical attention; and failed to account for the seriousness of skin issues for an amputee.

ARGUMENT

I. The De Minimis Standard Adopted in *Siglar* is Improper and its Application to Inmates With Disabilities, Like Buchanan, Illustrates the Unworkability of the Standard.

A. The Supreme Court's Ruling in *Wilkins* Rejected the Basis of *Siglar* and the Unworkability of the De Minimis Standard Demonstrates that the Standard is Improper Under the Text of the PLRA.

The district court decided this case below based on a Fifth Circuit precedent that is not only wrong but that—as a result of intervening Supreme Court authority—has no precedential value. In *Wilkins*, the Supreme Court overruled the de minimis standard that multiple circuits, including the Fifth Circuit, applied to physical injuries post-*Hudson*. Even without *Wilkins*' holding, however, neither *Hudson* nor the text of the PLRA support the unworkable de minimis standard invoked in *Siglar*.

1. The Supreme Court Overruled Relying on *Hudson* to Require a De Minimis Standard.

The genesis of this Court's requirement that a prisoner's physical injury be "more than de minimis" for the PLRA is a lone paragraph in *Siglar*, bereft of any other analysis, in which the Court simply imports the Supreme Court's standard for excessive force in *Hudson*, 503 U.S. at 9–10, to supply a definition for physical injury:

> In the absence of any definition of "physical injury" in the new statute, we hold that the well-established Eighth Amendment standards guide our analysis in determining whether a prisoner has sustained the necessary physical injury to support a claim for mental or emotional suffering. That is, the injury must be more than de minimus, but need not be significant.

Siglar, 112 F.3d at 193. That is the entirety of the analysis. As the Supreme Court has now made clear, it was wrong.

Hudson, on its face, only addressed excessive force—not physical injury. The Supreme Court held that "[t]he Eighth Amendment's prohibition of cruel and unusual punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind." *Hudson*, 503 U.S. at 9–10 (internal citations omitted). Yet that distinction was overlooked by this and several other Circuits, all of which attributed *Hudson*'s standard on *force* to the PLRA's language on *injury*, thereby creating an extra-textual de minimis standard under the PLRA. *See Siglar*, 112 F.3d at 193.

In *Wilkins*, the Supreme Court conclusively refuted any such use of *Hudson*, holding that circuit courts were wrong to interpret it as supporting a de minimis standard in the physical *injury* context:

> In *Hudson v. McMillian,* 503 U.S. 1, 4 (1992), this Court held that "the use of excessive physical force against a prisoner may constitute cruel and unusual punishment [even] when the inmate does not suffer serious injury." In this case, the District Court dismissed a prisoner's excessive force claim based entirely on its determination that his injuries were "*de minimis*." Because the District Court's approach, affirmed on appeal, is at odds with *Hudson*'s direction to decide excessive force claims based on the nature of the force rather than the extent of the injury, the petition for certiorari is granted, and the judgment is reversed.

Wilkins, 559 U.S. at 34. According to *Wilkins*, the *Hudson* Court, "rejected the notion that 'significant injury' is a threshold requirement for stating an excessive force claim." *Id.* at 37. "The 'core judicial inquiry,'" the Court reasoned, is "not whether a certain quantum of injury was sustained, but rather 'whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.'" *Id.* (quoting *Hudson*, 503 U.S. at 7). In other words, the Court reiterated that it is force that counts. *Id. Hudson* simply does not speak to injury and using it to establish a de minimis test for a physical *injury* is improper.

Because the "Fifth Circuit has yet to speak on whether *Wilkins* disturbed the de minimis rule," *Irby v. Nueces Cty. Sheriff*, 790 F. Supp. 2d 552, 559 (S.D. Tex. 2011), district courts have been left to blaze their own trails on this standard. Some—but not all—have held that *Wilkins* overruled *Siglar*. *See id.* at 559–60 ("Given the history of Fifth Circuit precedent, the nature of *Wilkins,* as well as its interpretation by other

district courts in the Fifth Circuit, the de *minimis* standard enunciated by *Harper* and *Siglar* is no longer good law and Defendants may not rely upon it."); *Hill v. Henry*, No. CA C-11-127, 2012 WL 2319096, at *10 (S.D. Tex. May 1, 2012), *report and recommendation adopted*, No. CIV.A. C-11-127, 2012 WL 2312814 (S.D. Tex. June 18, 2012) (citing *Wilkins*, 559 U.S. 34) ("As an initial matter, there is conceptual distinction between the *de minimis* injury and a *de minimis* use of force."); *Stewart v. Cain*, No. CIV.A. 11-403-JJB, 2012 WL 3230442, at *4 (M.D. La. July 6, 2012), *report and recommendation approved*, No. CIV.A. 11-403-JJB, 2012 WL 3230416 (M.D. La. Aug. 6, 2012) ("To the extent that the Fifth Circuit test required some specific quantum of injury—regardless of the force applied—it appears to be overruled by *Wilkins*."). But—as shown by this case—that recognition of *Wilkin*'s effect has been far from uniform, creating inconsistent results within the Circuit.[3]

Likewise, because *Siglar* is no longer good law due to the Supreme Court's intervening precedent, it is not binding precedent. Instead, this panel can effectuate the relief that Appellant and amici curiae urge: reject *Siglar* and re-adopt an inmate-by-inmate approach. *See Stokes v. Sw. Airlines*, 887 F.3d 199, 204 (5th Cir. 2018).

[3] While *Wilkins* specifically dealt with excessive force claims, that is a distinction without difference here. As one district court explained: "Although these cases, as Wilkins did, concern excessive force claims, as opposed to deliberate indifference claims, there is no reason to apply a different minimum level of injury standard in the latter claims. Indeed, the Fifth Circuit has cited the de minimis rule in both claims, as well as other Eighth Amendment contexts, interchangeably." *Irby*, 790 F. Supp. at 560 (collecting cases).

2. The Supreme Court's Eighth Amendment Jurisprudence in *Hudson* Does Not Support *Siglar*'s Deviation from the Text of the PLRA.

Neither *Hudson* nor the Eighth Amendment support *Siglar*'s de minimis standard. In *Hudson*, the Court addressed "whether the use of excessive physical force against a prisoner may constitute cruel and unusual punishment when the inmate does not suffer serious injury." 503 U.S. at 4. The Court answered in the affirmative. *Id.*

According to *Hudson*, the "objective component of an Eighth Amendment claim is [] contextual and responsive to 'contemporary standards of decency.'" *Id.* at 8 (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). "In the excessive force context," the Court stated, "[w]hen prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated." *Id.* "This is true," the Court stated, "*whether or not significant injury is evident.*" *Id.* (emphasis added). "Otherwise, the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury." *Id.* at 9.

Thus, the Court was not discussing physical *injury*, it was discussing physical *force*. Indeed, the Court further stated, "[t]hat is not to say that every malevolent touch by a prison guard gives rise to a federal cause of action." *Id.* at 9. Rather, "[t]he Eighth Amendment's prohibition of cruel and unusual punishments necessarily excludes from constitutional recognition *de minimis uses of physical force*, provided that the use of force is not of a sort repugnant to the conscience of mankind." *Id.* at 9–10 (emphasis added) (internal citations and quotation marks omitted). The Court recognized that the "Fifth

Circuit found Hudson's claim untenable because his injuries were 'minor.'" *Id.* at 10. But the Court *rejected* the Fifth Circuit's holding—explaining that "the blows directed at Hudson, which caused bruises, swelling, loosened teeth, and a cracked dental plate, are not de minimis for Eighth Amendment purposes." *Id.* at 10.

Despite *Hudson* not applying a de minimis standard to "physical injury," the Fifth Circuit attributed *Hudson*'s standard on *force* to the PLRA's language on *injury*. *Siglar* consequently misunderstood the Supreme Court's decision in *Hudson* when it held that § 1997e(e)'s "physical injury" component requires an injury that is "more than de minimis" because the Eighth Amendment requires an injury that is more than "de minimis."

Other courts have rejected *Siglar*'s reasoning and conclusion as a flawed understanding of *Hudson*. For example, the Tenth Circuit rejected the Fifth Circuit's interpretation of the PLRA entirely. *See United States v. LaVallee*, 439 F.3d 670, 687–88 (10th Cir. 2006). According to *LaVallee*, the Fifth Circuit's holding means that "a prisoner could constitutionally be attacked for the sole purpose of causing pain as long as the blows were inflicted in a manner that resulted in visible (or palpable or diagnosable) injuries that were de minimis." *Id.* at 688 (internal citations and quotation marks omitted). *LaVellee* held that plaintiffs "need not prove that an individual suffered a certain level or type of injury to establish excessive force . . . ." *Id.* And while the Ninth Circuit adopted *Siglar*'s de minimis standard, it rejected *Siglar*'s reasoning. *See Oliver v. Keller*, 289 F.3d 623, 628 (9th Cir. 2002). There, *Oliver* reasoned that any reliance

on Hudson and the Eighth Amendment was misplaced because Eighth Amendment excessive force claims examine "whether the use of physical force is more than de minimis." *Id.* (emphasis in original).

Even worse, *Siglar*'s reliance on *Hudson* overlooks a critical part of the Supreme Court's holding and, in turn, enables the disparate treatment of inmates with disabilities. Supreme Court precedent dictates injury cannot be the determinative factor; otherwise, "the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury." *Hudson*, 559 U.S. at 9. Defying this holding and reasoning, the Fifth Circuit made degree of *injury* the determinative factor under the PLRA. The Fifth Circuit's decision has significant ramifications: (1) it effectively permitted any physical punishment, so long as there is "less than some arbitrary quantity of injury," and (2) it harmed the ability of inmates with disabilities to seek legal recourse from abuse.

What may seem like a trivial injury to a healthy inmate could be a serious and/or life-threatening injury to one with disabilities. Contrary to *Hudson*, and the PLRA's text, however, the Fifth Circuit instituted a bar that glosses over the individualized needs of those with disabilities. *Hudson*'s refusal to impose this same bar underscores that *Siglar*'s reliance on *Hudson* was misplaced. Because *Hudson* does not support the Court's interpretation of the PLRA, the Court should reject the de minimis standard.

3. The Text of the PLRA Does Not Support a De Minimis Standard.

Hudson and *Wilkins* aside, the text of the PLRA also does not support *Siglar*'s de minimis standard. "The starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). The PLRA states: "No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury . . . ." 42 U.S.C. § 1997e(e). Although the relevant portion of the PLRA does not reach even fifty words, courts and academics have observed that the text of the PLRA "may well present the highest concentration of poor drafting in the smallest number of words in the entire United States Code." *Aref v. Lynch*, 833 F.3d 242, 263 (D.C. Cir. 2016) (quotation omitted). The text fails to identify the "type, duration, extent, or cause of 'physical injury' that it intended to serve as a threshold qualification for mental and emotional injury claims." *Oliver*, 289 F.3d at 626. Despite the text's shortcomings, at least two things are certain.

First, the PLRA's objective purpose is to "spare federal courts from frivolous damages lawsuits while preserving the rights of prisoners subjected to constitutional abuses." *Shaheed-Muhammad v. DiPaolo*, 393 F. Supp. 2d 80, 107 (D. Mass. 2005); *see also* Appellant's Opening Br. at 58 (highlighting types of frivolous claims Congress sought to avoid, such as bad haircuts and chunky peanut butter). Second, "physical injury" is

not qualified anywhere in the text. Therefore, absent *Siglar*, on a plain-text reading of the statute, there is no "de minimis" exception—a "physical injury" is a "physical injury," without qualification. This reading is aligned with the text of the statute and with Congress' attempts to safeguard the rights of inmates with disabilities in the PLRA and other related contexts. *See* 42 U.S.C. § 12131 et seq.; 29 U.S.C. § 794 et seq. Two familiar canons of statutory construction support this conclusion: (1) the ordinary meaning canon; and (2) the prior construction canon.

a. The Ordinary Meaning Canon Compels the Conclusion that "Physical Injury" Should Not be Qualified by Extra-Textual Language.

Under the ordinary meaning canon, "every word employed in the constitution [a statute, rule, or private instrument] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 69 (2012) (internal citation omitted). When construing a statute, courts should presume that "a thoroughly fluent reader can reliably tell in the vast majority of instances from contextual and idiomatic clues which of several possible senses a word or phrase bears." *Id.* at. 70.

Here, the phrase at issue is simple: "physical injury." The text in no way limits or qualifies physical injury; instead, the opposite is true: physical injury is used to limit the types of actions a prisoner can bring when alleging mental or emotional harm. *See* 42 U.S.C. § 1997e(e). Thus, Congress chose to qualify certain terms in the statute, but

chose not to qualify "physical injury." Absent some qualification, such as inserting "serious" into the text before "physical injury"—as Congress *did* in another section of the PLRA, *see* OMNIBUS CONSOLIDATED RESCISSIONS AND APPROPRIATIONS ACT OF 1996, PL 104–134, April 26, 1996, 110 Stat 1321 § 804(d) (codified as 28 USC § 1915g)—a "physical injury" should be defined as a fluent reader would understand the term. "Physical" or "bodily injury" means "physical damage to a person's body." BLACK'S LAW DICTIONARY (10th ed. 2014); *see also* BLACK'S LAW DICTIONARY (2d ed. 1910) (illustrating that the definition of "physical injury" has remained consistent). Under this definition, any bodily injury, even a de minimis injury, suffices.

A natural reading of "physical injury" aligns with the objective purpose of the statute—requiring some physical manifestation of injury to limit claims of mental or emotional injury while not shutting courthouse doors. *Siglar*, however, subverts both the text and the objective purpose of the statute by raising the burden for inmates to litigate constitutional injuries. In particular, as seen in real-world practice, an alternative, a-textual reading of "physical injury" results in a disparity between two types of inmates: the healthy and those with disabilities. The ordinary meaning of "physical injury" does not support this dichotomy.

b. Even if the Court Applied Some Form of the Prior Construction Canon, the De Minimis Standard is Still Unsupportable.

Despite the import of the ordinary meaning canon, the Fifth Circuit added a qualified meaning of "physical injury" by referencing allegedly analogous case law. But *Siglar*'s application of the canon—or of any related rationale—was faulty.

Under the prior construction canon, "[w]hen a statute uses the very same terminology as an earlier statute . . . it is reasonable to believe that the terminology bears a consistent meaning." SCALIA & GARNER, supra p. 13 at 323. Courts routinely hold that if a term has acquired some technical legal sense, then that term "should be given effect in the construction of later-enacted statutes." *Id.* at 324. Here, the Fifth Circuit appears to have adopted the Supreme Court's Eighth Amendment jurisprudence in *Hudson*—rather than from a similar statute as is custom with this canon. *See Gomez v. Chandler*, 163 F.3d 921, 923–24 (1999) (stating that the Court derived the meaning of physical injury from Eighth Amendment jurisprudence as outlined in *Hudson*). The Fifth Circuit then attributed its understanding of "physical injury" from *Hudson* to "physical injury" in the PLRA. This was improper for two reasons.

First, *Hudson* was concerned with the use of physical *force*, not physical *injury*. *See Hudson*, 503 U.S. at 9–10. Thus, *Hudson* did not define the term that the Fifth Circuit sought guidance on. Second, the PLRA does not invoke the Eighth Amendment as its guidepost. The term "de minimis" appears nowhere in the PLRA's text; nor do the words "cruel and unusual" or the like. Incorporating a nebulous Eighth Amendment

standard into the PLRA to construe an otherwise plain term is improper and "contrary to [the PLRA's] design—the PLRA was enacted to weed out frivolous claims, not to require that all claims, irrespective of the constitutional provision under which they arise, satisfy the Eighth Amendment." Maggie Filler & Daniel Greenfield, *A Wrong Without a Right? Overcoming the Prison Litigation Reform Act's Physical Injury Requirement in Solitary Confinement Cases*, 115 NW. L. REV. 257, 264 (2020).

The Fifth Circuit's incorporation of a "de minimis" standard resulted in an extra-textual qualification of the term "physical injury" that directly undermined the claims of inmates with disabilities. Indeed, *Siglar*'s qualification added an enhanced burden on prisoners wishing to protect their constitutional rights that Congress never enacted. This enhanced burden creates an unsupportable disparity between healthy inmates and inmates with disabilities.

B. The Application of the De Minimis Standard to Inmates With Disabilities Illustrates the Unworkability of the Standard.

The de minimis standard created in *Siglar* is unworkable because it fails to appreciate the unique needs and vulnerabilities of inmates with disabilities. They often require more frequent healthcare, and a host of other accommodations, including different cells, shower privileges, cafeteria or library access. Inmates with disabilities receive these accommodations because prisons, and courts alike, recognize that inmates with disabilities require enhanced care. *See* Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 et seq. (prohibiting public entities, like jails and

prisons, from excluding persons with disabilities from participating in, or being "denied the benefits of some service, program, or activity by reason of his or her disability"); § 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq. (protecting qualified inmates from discrimination on the basis of disability).

Notwithstanding the laws in place to safeguard inmates with disabilities, those laws apparently carry no weight once an inmate with a disability is injured. Instead, *Siglar*'s de minimis standard causes courts to reject the otherwise customary inmate-by-inmate approach for a new one-size-fits-all standard. *See, e.g.*, *Siglar*, 112 F.3d at 193. The de minimis standard improperly allows courts to ask how a "free world person" would react to an injury. *See, e.g.*, *Luong*, 979 F. Supp. at 486. This new standard fails to grasp the challenges and vulnerabilities each inmate uniquely faces. In fact, it makes no attempt to differentiate between the healthy and those with disabilities. The Fifth Circuit should reject this unsupportable standard as contrary to the Court's jurisprudence in other disability contexts—namely, the ADA and Rehabilitation Act.

1. Courts Recognize and Accommodate the Unique Needs of Inmates with Disabilities in the ADA and Rehabilitation Act Contexts.

In *Pennsylvania Dept. of Corrections v. Yeskey*, the Supreme Court held that inmates may bring claims under Title II of the ADA for disability discrimination. 524 U.S. 206 (1998). Lower courts interpret *Yeskey*'s holding to permit similar claims under § 504 of the Rehabilitation Act. *See, e.g.*, *Cleveland v. Gautreaux*, 198 F. Supp. 3d 717, 736 n.14 (M.D. La. 2016) (noting that *Yeskey* extends to § 504 of the Rehabilitation Act).

Accordingly, the Federal Bureau of Prisons—and its state counterparts—cannot discriminate against inmates based on disabilities under either statute. Indeed, the rights of inmates with disabilities are safeguarded and tailored toward their particular disabilities.

For example, courts have held that prisoners with visual impairments are entitled to receive reasonable visual accommodations in the library. *See Walker v. City of New York*, 367 F. Supp. 3d 39, 54 (S.D.N.Y. 2019). Likewise, courts have prohibited blanket bans on motorized wheelchairs where prisons do not individually assess the needs of the requesting inmate. *Wright v. New York State Dep't of Corr.*, 831 F.3d 64, 73–76 (2d Cir. 2016). Courts have also held that a failure to provide a deaf prisoner access to a teletypewriter to communicate with visitors constituted an ADA violation. *Guy v. LeBlanc*, 400 F. Supp. 3d 536, 543 (M.D. La. 2019). Moreover, it is unlawful for jails and prisons to violate federal accessibility standards for toilets, sinks, showers, hot water dispensers, telephones, and water fountains. *Pierce v. Cty. of Orange*, 526 F.3d 1190, 1218 (9th Cir. 2008). There is no doubt that courts require jails and prisons to accommodate various medical conditions or infirmities so that the affected inmates can access recreational activities, medical services, and educational and vocational programs. *See Yeskey*, 524 U.S. at 208–13.

By focusing on the individual when accommodating these various infirmities, courts and prisons inherently recognize that prisoners with disabilities have unique needs. *See, e.g.*, *Melton v. Dall. Area Rapid Transit*, 391 F.3d 669, 672 (5th Cir. 2004);

Garrett v. Thaler, 560 F. App'x 375, 382 (5th Cir. 2014); *Gautreaux*, 198 F. Supp. 3d at 736. Under the de minimis standard, however, this necessary recognition effectively stops once an inmate with a disability is injured.

2. The *Siglar* De Minimis Standard, in Conjunction with *Luong*, Eviscerates Safeguards for Inmates With Disabilities.

Despite the aforementioned precedent, *Siglar* treats healthy inmates and inmates with disabilities as one and the same. District court opinions demonstrate the fatal flaw in such a standard—a flaw that allows courts to consistently use *Siglar* to undermine the claims of those with disabilities.

In *Luong*,[4] the Northern District of Texas considered an inmate's claim that prison officials failed to protect him from physical assault by other inmates. 979 F. Supp. at 482–83. Noting that Luong complained of a bleeding tongue, injured shoulder, bruised leg, tender head, scratches to his face, and swollen wrists from various assaults, the court considered whether those injuries were sufficient to bring a claim under the PLRA using *Siglar*'s de minimis standard. *Id.* at 486. After stating that the *Siglar* Court did not provide a sufficient definition of what constitutes a "de minimis" injury, the court fashioned its own. *Id.* According to *Luong*:

[4] This Court is not bound by *Luong*. But *Luong* has shaped how the de minimis standard is applied in the lower courts. Indeed, in concluding that Buchanan's injuries were not more than de minimis, the district court quoted *Luong*. ROA.180 (quoting *Luong*, 979 F. Supp. at 486 as saying a "physical injury is an observable or diagnosable medical condition requiring treatment by a medical professional").

> [A]n appropriate de minimis standard would be whether as a common-sense category approach to the injury; would the injury require or not require a free world person to visit an emergency room, or have a doctor attend to, give an opinion, diagnosis and/or medical treatment for the injury? In effect, would only home treatment suffice?

Id. The *Luong* Court went on to say that a "physical injury" is "an observable or diagnosable medical condition requiring treatment by a medical care professional. It is not a sore muscle, an aching back, a scratch, an abrasion, a bruise, etc. . . . " *Id.* "Injuries treatable at home and with over-the-counter drugs, heating pads, rest, etc.," the court concluded, "do not fall within the parameters of 1997e(e)." *Id.* The court thus dismissed *Luong*'s complaint. *See also Wallace v. Brazil*, No. 7:04 CV 187 R, 2005 WL 4813518, at *1 (N.D. Tex. Oct. 10, 2005) (citing *Luong* and *Siglar* in support of the finding that a knot on the back of an inmate's head and an abrasion on his leg were "nothing more than de minimis").

Luong's construction of the de minimis standard reveals its flaws.[5] *Luong* fails to recognize that what might be a "de minimis injury" to a healthy inmate could be a life threatening injury to an inmate with a disability. Although the standard presumes a healthy inmate who need not fear "minor injuries," these same injuries may be far more significant and traumatic for those with disabilities or illnesses. A healthy free world

[5] The Ninth Circuit held that *Luong* required "too much," but also held that "any injury" is "too little." *Oliver*, 289 F.3d at 628. Even if the more lenient Ninth Circuit standard governed "de minimis," inmates with disabilities would still be burdened by an amorphous, extra-textual standard prohibiting "any injury."

person that suffers a stubbed toe may not seek medical attention, for example, but a diabetic would to prevent potential limb loss. Likewise, a healthy person that suffers a cut may not seek medical attention, but a person with a clotting disorder would to prevent potentially life threatening blood loss. And, as in the case at bar, a healthy person that suffers from a sore may not seek medical attention, but an amputee would to prevent a host of complications he is more susceptible to, such as infections and cancer.

In short, the de minimis standard creates a disparity between healthy inmates and inmates with disabilities that is unsupported by the statute and precedent. And, as lower courts and legal academia note, failure to care for the unique needs of disabled individuals is tantamount to discrimination. *See*:

- *McCoy v. Tex. Dep't of Crim. Justice*, No. C–05–370, 2006 WL 2331055, at *7 (S.D. Tex. Aug. 9, 2006) ("In the prison context . . . failure to make reasonable accommodations to the needs of a disabled prisoner may have the effect of discriminating against that prisoner because the lack of an accommodation may cause the disabled prisoner to suffer more pain and punishment than non-disabled prisoners.").

- Emily Alexander, *The Americans With Disabilities Act and State Prisons: A Question of Statutory Interpretation*, 66 FORDHAM L. REV. 2233, 2283 (1998) ("To provide reasonable accommodation to prevent prisoners with disabilities from enduring more punishment than non-disabled prisoners is not special treatment. . . . To provide accommodations to remedy this problem only ensures that the disabled prisoner does not suffer psychologically or physically more than non-disabled prisoners.").

- Eleanor M. Levine, *Compensatory Damages Are Not for Everyone: Section 1997e(e) of the Prison Litigation Reform Act and the Overlooked Amendment*, 92 NOTRE DAME L. REV. 2203, 2220 (2017) ("[I]f the amended § 1997e(e) is read to bar

> constitutional violations absent a physical injury, it will result in unfair application for different defendants.").

Here, the district court relied on *Siglar* and *Luong* to reject Buchanan's claim of physical injury when he suffered pain and actual, physical sores. These sores were more threatening to him as an amputee than a healthy inmate. Nevertheless, under the current legal landscape, the district court treated Buchanan's injuries as any other inmate's injuries. Yet if this were an ADA or Rehabilitation case, the prison would have been prohibited from making this identical decision.

II. Even if the De Minimis Standard is Proper, Buchanan's Injuries Were More Than De Minimis.

Regardless of the standard, Buchanan's injuries were more than de minimis. The district court erred in holding otherwise because it ignored record evidence showing Buchanan's great pain and need for medical attention, and failed to account for the seriousness of skin issues for an amputee.

A. The District Court Ignored Record Evidence Showing the Severity of Buchanan's Injuries.

Dismissing his claims of injury, the district court summarized:

> Buchanan alleges that he experienced "discomfort" while using the toilet without handrails after he was assigned to D-pod on November 8, 2019, and that he developed sores on his "residual limb" because he was unable to shower or clean the liner on his prosthesis for a period of five days.

ROA.179–80. But the district court mischaracterized Buchanan's allegations, failed to accurately capture his complaint, and ignored record evidence. Tellingly, at no point

does the district court actually acknowledge the pain Buchanan experienced because of his sores.

Buchanan repeatedly explained that his inability to shower caused him to develop "painful sores on his residual limb" and explicitly stated that his sores caused him "great pain and discomfort." ROA.41 ("As a result of the six-day delay in not being able to shower, the plaintiff has developed painful sores on his residual limb due to his inability to clean himself or his prosthetic liners, causing him great pain and discomfort."); ROA.82 ("The Plaintiff also developed sores on his residual limb as a result of his inability to properly bathe himself, or clean his prosthetic liners, causing him great pain and discomfort."); ROA.101; ROA.140. The record evidence shows that Buchanan suffered far more than mere "discomfort" because of his sores—indeed, he had injuries that should have received medical attention. *See infra* II.B.

Likewise, the district court incorrectly held that "[b]ecause Buchanan does not allege facts showing that he required medical care for these issues, his allegations do not demonstrate an injury that was more than de minimis for purposes of the PLRA." ROA.179–80. This, too, belies the record. Buchanan asked for medical attention for his sores, but never received treatment. ROA.140 ("I never received medical treatment because the medical department never responded to my inmate request forms."). The district court opinion simply ignores Buchanan's request.

Buchanan's statements are clear and unequivocal. Moreover, Buchanan filed his complaint as a pro se litigant. And "[a] document filed pro se is to be liberally

construed." *Erikson v. Pardus*, 127 S. Ct. 2197, 2200 (2007). The record demonstrates that Buchanan attempted to present sufficient evidence that his injuries were serious—not only did he repeatedly assert that he was in great pain, he also explicitly asked for medical care to attend to his skin injuries. Under the lenient standard of reviewing pro se documents, the district court was incorrect to conclude that Buchanan's injuries were de minimis.

B. Buchanan's Injuries Were More Than De Minimis.

As other circuits have recognized, when "the complainant is a paraplegic, particular injuries pose different, and possibly more substantial, risks than they might to an average prisoner." *Pierce*, 526 F.3d at 1224 n.43. That is the case here. Amputees frequently develop significant skin care conditions because of the interaction between their prosthetic and their skin.[6] And there is a broad consensus in the medical community that skin issues developed by amputees require medical attention.[7]

---

[6] *See* M. Jason Highsmith, et al., *Identifying and Managing Skin Issues with Lower-Limb Prosthetic Use*, AMPUTEE COALITION OF AMERICA, 42, https://www.amputee-coalition.org/wp-content/uploads/2015/06/skin_issues_lower.pdf (last visited Dec. 23, 2020) ("Skin issues are very common among amputees.").

[7] *See, e.g.*, S. William Levy, MD, *Skin Problems of the Amputee*, DIGITAL RESOURCE FOUNDATION FOR THE ORTHOTICS & PROSTHETICS COMMUNITY, http://www.oandplibrary.org/alp/chap26-01.asp (last visited Dec. 24, 2020) ("Skin lesions, however minute they may appear, are nevertheless of great importance since they can be the beginning of an extensive skin disorder that may be mentally, socially, and economically disastrous to a given amputee."); National Limb Loss Information Center Staff, *Fact Sheet: Wound Care: Preventing Infection*, AMPUTEE COALITION OF AMERICA, 1–3 (revised 2009), https://3w568y1pmc7umeynn2o6c1my-wpengine.netdna-ssl.com/wp-content/uploads/2015/03/woundcare.pdf (describing

Buchanan's sores were precisely the type of skin issue that the medical community agrees requires medical attention, thus making his injuries more than de minimis under any standard.

While sores or flesh wounds might be analogous to "scrapes, scratches, cuts, abrasions, [and] bruises" for which "free world people" suffer every day and "for which they never seek professional medical care," that is not the case for amputees. *See Luong*, 979 F. Supp. at 486. For amputees, "[s]kin issues need to be taken seriously. A simple skin breakdown can lead to more severe problems, such as infection, cancer, osteomyelitis (bone infection), and ultimately revision surgery." Highsmith, *supra* note 6, at 42. Even minor irritations are "a potentially dangerous symptom" that should be dealt with as early as possible. Levy, *supra* note 7. Indeed, the high possibility of infection is partially why amputees are directed to seek "medical treatment" and "have a doctor attend to" their skin injuries. *See Luong*, 979 F. Supp. at 486; *see also Pierce*, 526 F.3d at 1224 (explaining that bed sores and bladder infections clear the *Luong* standard because "both constitute observable or diagnosable medical conditions that would lead

---

how to prevent wound care, what to do when wounds develop, and the need for medical attention when wounds develop); Paddy Rossbach, RN & Terrence P. Sheehan, MD, *Tips for Taking Care of your Limb*, AMPUTEE COALITION OF AMERICA, 38 (May / June 2008), https://3w568y1pmc7umeynn2o6c1my-wpengine.netdna-ssl.com/wp-content/uploads/2015/03/taking_care_your_limb.pdf ("Bacterial and fungal infections can lead to skin irritation, abrasions and eventually skin breakdown. Left unchecked, this could lead to infection and ulcerations, leaving you unable to use your prosthesis for an extended length of time.").

a person to seek treatment"). And because of the serious risk factors involved, amputees "should be evaluated and treated as necessary by a health care practitioner in consultation with the prosthetist (an expert who designs, fits, builds, and adjusts prostheses)." Jan J. Stokosa, CP, *Skin Care of the Residual Limb*, MERCK MANUAL (Dec. 2019).[8]

The district court's holding failed to accommodate the reality and severity of skin issue for amputees. The record evidence and medical science both indicate that Buchanan's injuries were painful, required medical attention, and could have led to much more severe issues. As an amputee, his injuries had the propensity to become a "more serious malady" with "lasting effects." *Accord Alexander v. Tippah County, Miss.*, 351 F.3d 626, 631 (5th Cir. 2003) (holding that vomiting was a de minimis injury because it did not warrant medical attention, was not a symptom of a more serious malady, and had no lasting impact). Buchanan's injuries, therefore, should be considered more than de minimis even under the stringent *Luong* standard. *See Pierce*, 526 F.3d at 1224 (explaining that bladder infections and bed sores are more than de minimis, even under *Luong*, because they "pose significant pain and health risks to paraplegics"). The district court erred in holding otherwise and its judgment should be reversed.

[8] Available at https://www.merckmanuals.com/home/special-subjects/limb-prosthetics/skin-care-of-the-residual-limb.

CONCLUSION

This case highlights the unworkability of the de minimis standard adopted in *Siglar*. The standard is improper, not based in the text of the statute, and contrary to the Supreme Court's Eighth Amendment jurisprudence. Furthermore, the standard also fails to account for the special needs and considerations of prisoners with disabilities. Buchanan's case is a perfect example of this failure. Buchanan provided the district court with ample evidence of his pain, severe injuries, and requests for medical attention. The district court, citing *Siglar* and *Luong*, ignored the record evidence and treated Buchanan like any other healthy inmate as it failed to consider the unique severity of an amputee's flesh wounds. Buchanan's case shows just how unworkable the *Siglar* standard is. Therefore, this Court should reject the de minimis standard adopted in *Siglar*. At the very least, this Court should reverse the district court's erroneous finding that Buchanan's injuries were merely de minimis.

Dated: February 12, 2021

Respectfully submitted,

/s/ Dan Syed

Richard D. Salgado
Dan Syed
Michael J. Murtha
Kelsey L. Smith
JONES DAY
2727 North Harwood Street
Dallas, TX 75201
dsyed@jonesday.com
rsalgado@jonesday.com

Brian East
State Bar No. 06360800
DISABILITY RIGHTS TEXAS
2222 W. Breaker Lane
Austin, TX 78758
Tel: (512) 407-2718
beast@disabilityrightstx.org

Ronald Lospennato
LA Bar No. 32191
DISABILITY RIGHTS LOUISIANA
8325 Oak Street
New Orleans, LA 70118
Tel: (504) 522-2337
rlospennato@advocacyla.org

Greta Kemp Martin
MS Bar No. 103672
DISABILITY RIGHTS MISSISSIPPI
5 Old River Place, Ste. 101
Jackson, Mississippi 39211
Tel. (601) 968-0600
email: gmartin@drms.ms

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2021, I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit, using the CM/ECF system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this notice as service of this document by electronic means.

Dated: February 12, 2021

/s/ Dan Syed
Dan Syed

Certificate of Compliance with Rule 32(a)

I hereby certify that: (1) this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,494 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and (2) this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Times New Roman font in the text.

Dated: February 12, 2021

/s/ Dan Syed
Dan Syed

Certificate of Electronic Submission

I hereby certify that: (1) required privacy redactions required under Local Rule 25.2.13 have been made; (2) the electronic submission of this document is an exact copy of the corresponding paper document; and (3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free from viruses.

Dated: February 12, 2021

/s/ Dan Syed
Dan Syed