No. 17-10792-GG

In the United States Court of Appeals for the Eleventh Circuit

CONRAAD L. HOEVER,

Plaintiff - Appellee - Cross Appellant,

v.

R. MARKS, ET AL.,

Defendants – Appellants – Cross Appellees.

CROSS-APPELLEES' EN BANC ANSWER BRIEF

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
NO. 4:13-CV-549

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ORAL ARGUMENT STATEMENT

Oral argument has been set for the week of February 22, 2021.

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STATEMENT OF THE ISSUE

Whether the Prison Litigation Reform Act bars punitive damages for constitutional claims, including First Amendment claims, without a showing of physical injury.

STATEMENT OF THE CASE

1. In 2010, Conraad Hoever was convicted in state court of lewd and lascivious molestation, in violation of Fla. Stat. § 800.04(5)(a) and (c)2, for assaulting and sexually abusing a fifteen-year-old student in his classroom while he was a math teacher. *See Hoever v. Jones*, No. 14-cv-62096, 2015 WL 13827139, at *1–2, 9 (S.D. Fla. Sept. 2, 2015) (summarizing facts of the case and evidence presented at trial, including Hoever's testimony, victim's testimony, DNA evidence, and Hoever's post-*Miranda* statement to law-enforcement authorities), *rep't & rec. adopted sub nom. Hoever v. United States*, No. 14-cv-62096, 2015 WL 13827129 (S.D. Fla. Dec. 9, 2015). Hoever was sentenced to fifteen years imprisonment, the statutory maximum for his offense of conviction. *See id.* at *2. His appellate counsel sought to file an *Anders* brief, and the district court of appeal affirmed his conviction and sentence in a unanimous, per curiam opinion. *Id.*; *see Hoever v. State*, 77 So. 3d 1274 (Fla. 4th DCA 2011) (Table).

In 2011, Hoever sought habeas relief in federal court. *Hoever*, 2015 WL 13827139, at *3. He raised 21 claims. *Id.* The magistrate judge concluded that all 21

claims lacked merit, *id.* at *12, and the district court agreed, 2015 WL 13827129, at *1. The district court and this Court denied a certificate of appealability. *Id.*; *Hoever v. Fla. Dep't of Corr.*, No. 16-10234-E (11th Cir. Oct. 12, 2016) (denying certificate of appealability); *Hoever v. Fla. Dep't of Corr.*, No. 16-10234-E (11th Cir. Jan. 9, 2017) (denying motion to reconsider the single-judge's certificate-of-appealability decision); *Hoever v. Fla. Dep't of Corr.*, No. 16-9713 (U.S. Oct. 2, 2017) (denying petition for certiorari).

2. The "three-strikes rule" of the Prison Litigation Reform Act (PLRA) seeks to curtail abusive prisoner litigation by imposing certain limits on a prisoner who has filed "three meritless suits." *See Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002); 28 U.S.C. § 1915(g). During his incarceration, Hoever has accumulated seven strikes under the PLRA. *Hoever v. Andrews*, No. 4:14-cv-274, 2015 WL 10987077, at *1 (N.D. Fla. Feb. 11, 2015), *aff'd*, 622 F. App'x 888 (11th Cir. 2015) (dismissal for failure to state a claim); *Hoever v. Caper*, No. 4:14-cv-273, 2014 WL 6674490, at *4 (N.D. Fla. Nov. 25, 2014) (dismissal for failure to state a claim); *Hoever v. Bockelman*, No. 4:14-cv-275, 2014 WL 3819174, at *4 (N.D. Fla. Aug. 3, 2014) (dismissal for abuse of the judicial process); *Hoever v. Howard*, 4:14-cv-229, DE9 (N.D. Fla. June 12, 2014) (dismissal for failure to state a claim); *Hoever v. Crews*, No. 4:13-cv-73, 2014 WL 1687011, at *5 (N.D. Fla. Apr. 25, 2014) (dismissal for misjoinder, failure to comply with a court order, and failure to state a

claim); *Hoever v. Buss*, No. 5:11-cv-254, 2013 WL 5814492, at *3 (N.D. Fla. Oct. 29, 2013) (dismissal for misjoinder and failure to comply with a court order), *dismissed sub. nom Hoever v. Porter*, No. 13-15152 (11th Cir. Oct. 8, 2014) (dismissing appeal as frivolous).

3. In this case, proceeding pro se below, Hoever filed suit against four correctional officers, including Cross Appellees (referred to herein as "Defendants"), under 42 U.S.C. § 1983 and 42 U.S.C. § 1985, alleging violations of the First Amendment and of the Due Process Clause of the Fourteenth Amendment. His second amended complaint (the operative complaint) alleged that in the summer of 2013, while Hoever was an inmate at the Franklin Correctional Institution in Carrabelle, Florida, Defendants "subjected him to harassment and threats of physical violence and death in retaliation for filing grievances and to deter him from filing further grievances." *Hoever v. Carraway*, 815 F. App'x 465, 466 (11th Cir. 2020) (Mem).

Although Hoever alleged that he was threatened for filing grievances, he did not allege that those threats deterred him from filing additional grievances. *See* DE34 at 10. Just the opposite: Hoever alleged that he filed at least seven grievances in response to the alleged threats. *Id.* at 7, 8, 10.

In his "Statement of Claims," Hoever asserted that Defendants alleged "threats, retaliation, harassment, and conspiracy" violated his "right to free speech

under the First Amendment" and "constituted due process violations under . . . the Fourteenth Amendment." *Id.* at 11, 12. Hoever did not point to any particularized injury—physical or non-physical—that he suffered as a result of those alleged actions. *See id*. In the sole sentence of the complaint identifying his alleged injuries, Hoever stated: "As a result of Defendants' actions, Plaintiff experienced physical injuries, personal humiliation, mental anguish, physical and mental intimidation, blemish to his prison record, impairment of his reputation, permanent defamation, and irreparable harm now and in the future." *Id.* at 12. Hoever did not say which defendant caused which injuries or offer specific facts supporting his allegations of physical injuries or mental anguish. *See id*.

Hoever asked for seven forms of relief: (1) a "declaration that the acts and omissions" described "violated Plaintiff's rights under the Constitution and laws of the United States"; (2) "[p]reliminary and permanent Injunctions . . . [o]rdering all the defendants to stop harassing, retaliating [against], and [making] threats against" him" and also "[o]rdering all the defendants to stop depriving inmates [of] the aforementioned Constitutional rights"; (3) "[c]ompensatory damage in the amount to be determined by the jury for the injuries and pain and suffering to the Plaintiff against each Defendant, jointly and severally"; (4) "[p]unitive damages in the amount to be determined by the jury against each defendant"; (5) "[a] jury trial on

all issues triable by jury"; (6) "Plaintiff's costs in this lawsuit"; and (7) "[a]ny additional relief [the court] deems just, fit, proper, and equitable." *Id*. at 12–13.

Defendants moved to dismiss the second amended complaint, arguing in relevant part that Hoever's request for punitive damages was barred by this Court's precedents interpreting 42 U.S.C § 1997e(e). DE45, at 19–21. The magistrate judge agreed, finding that the PLRA precluded an award of compensatory or punitive damages without a showing of physical injury. DE51, at 12 (citing 42 U.S.C. § 1997e(e), *Smith v. Allen*, 502 F.3d 1255, 1271 (11th Cir. 2007)). Hoever objected to this part of the report and recommendation, arguing that the Eleventh Circuit should "update" its law because under the "proper" standard the PLRA barred only compensatory damages under Section 1997e(e). DE56, at 6 & n.1.

The district court adopted the magistrate judge's report and recommendation and dismissed Hoever's claims for punitive damages. DE57, at 1; *see* DE51, at 11–13. In the same order, the court dismissed as moot his request for injunctive relief because he had been transferred to a different correctional facility. *Id*.

The district court denied Defendants' motion for summary judgment. DE86, at 10. At trial, Hoever testified to the facts alleged in his Complaint, while the correctional officers offered testimony denying Hoever's accounts. Defendant Marks testified, among other things, that he was not even assigned to Plaintiff's dorm when Plaintiff alleged his wrongdoing and Defendants Marks and Paul

testified that they rarely, if ever, can learn of grievances. *See* Tr. 162, 255-56, 263-65, 274, 295, 330, 336, 389-90, 403-04, 501-02, 504, 510, 515. Defendants also provided documentary evidence that Marks did not enter Hoever's assigned side of the dorm. Def. Exh. 12.

During his closing argument, Hoever repeatedly argued that the jury should credit his testimony, notwithstanding the competing testimony of Defendants denying his accusations, because Hoever could not get any money out of the case and had nothing to gain from bringing this suit and exposing himself to further retaliation. For example, he argued that "[t]his is not about money. All I can get out of this if something would happen is nominal damages." Similarly, he urged that "[t]here is no money in this whole situation. It's justice." He further argued that he had "no reason to lie": "I am gaining nothing. I'm not getting money on this. I just want justice to be served." Tr. 615:04–09, 620:17–19. Hoever did not tell the jury that he had asked for compensatory and punitive damages, that he had the right to appeal the district court's order denying those requests, that he did stand to "gain[]" or "get[] money" if any such appeal was successful, or that the amount of such money could vastly exceed what was needed to compensate him for any actual, provable injuries. *See* Tr. 615:04–09, 620:17–19.

The jury returned a verdict in Hoever's favor and awarded him nominal damages of one dollar. DE 127; *see also* DE 129.

Defendants Marks and Paul appealed. Hoever filed a cross appeal, challenging (among other things) the district court's dismissal of his punitive damages claims. The panel affirmed the dismissal of his punitive damages claims, holding that under Circuit precedent, "Hoever would only have been entitled to punitive damages if he were able to show he suffered some form of physical injury as a result of Marks' and Paul's alleged constitutional violations," and he had not done so. *Carraway*, 815 F. App'x at 469.

Hoever filed a petition for rehearing and rehearing en banc. Without calling for a response, the Court vacated the panel's decision and granted rehearing en banc. *Hoever v. Carraway*, 977 F.3d 1203, 1204 (11th Cir. 2020). A subsequent order requested that the parties focus their briefs on the following issue: "Does the Prison Litigation Reform Act (PLRA), 42 U.S.C. 1997e(e), bar punitive damages for constitutional claims, including First Amendment claims, without a showing of physical injury?"

SUMMARY OF THE ARGUMENT

The district court correctly concluded that the PLRA bars Hoever from recovering punitive damages in this case, but it should not have based that ruling on the physical-injury requirement of 42 U.S.C. § 1997e(e). A different provision of the PLRA, codified at 18 U.S.C. § 3626(a)(1), already precludes the recovery of punitive damages in a case of this kind. At a minimum, the law of this Circuit holds that section 3626(a)(1) imposes "strict limitations" on a prisoner's ability to recover punitive damages, and this Court should take those limitations into account in determining whether section 1997e(e) imposes a partially overlapping and practically useless *additional* limitation on the recovery of such damages.

When construed in light of section 3626(a)(1), section 1997e(e) is most reasonably interpreted not to categorically bar punitive damages for constitutional claims, including First Amendment claims, without a prior showing of physical injury or the commission of a sexual act. However, Hoever is wrong to argue that section 1997e(e) "does not apply to First Amendment claims at all." The plain text of the statute applies to any "Federal civil action . . . for mental or emotional injury," regardless of whether such an injury arises out of an alleged violation of the First Amendment.

ARGUMENT

THE PRISON LITIGATION REFORM ACT BARS HOEVER FROM RECOVERING PUNITIVE DAMAGES IN THIS CASE.

The "overriding goal" of the Prison Litigation Reform Act (PLRA) is to "reduc[e] the number of prisoner cases filed." *Harris v. Garner*, 216 F.3d 970, 978 (11th Cir. 2000) (en banc). Congress enacted the PLRA "in the wake of a sharp rise in prisoner litigation in the federal courts," and "[t]he PLRA contains a variety of provisions designed to bring this litigation under control." *Woodford v. Ngo*, 548 U.S. 81, 84 (2006).

One such provision, adopted in Section 803 of the PLRA, is codified as 42 U.S.C. § 1997e(e). *Id.* But section 1997e(e) does not work in isolation. *See id.* Other provisions of the PLRA also seek to "'reduce the quantity and improve the quality of prisoner suits.'" *Id.* at 94 (quoting *Porter v. Nussle*, 534 U.S. 516, 524 (2002)). Accordingly, courts construing section 1997e do not just look to the text of that provision; they also consider whether a proffered interpretation "fits with the general scheme of the PLRA." *Id.* at 93 (rejecting proposed interpretation of section 1997e(a) because, among other considerations, it "would turn that provision into a largely useless appendage"); *see, e.g.*, *Harris*, 216 F.3d at 974–76 (construing section 1997e(e) in light of other provisions of the PLRA, including section 1997e(a), 28 U.S.C. § 1915(b)(1), and 28 U.S.C. § 1915(g)).

Of particular relevance here, the law of this Circuit holds that a different provision of the PLRA, adopted in Section 802 of the Act, imposes "strict limitations" on awards of punitive damages. *See* 18 U.S.C. § 3626(a)(1)(A), (g)(7); *Johnson v. Breeden*, 280 F.3d 1308, 1323–26 (11th Cir. 2002), *abrogated on other grounds by Kingsley v. Hendrickson*, 576 U.S. 389 (2015). This Court should take those already "strict limitations" into account in deciding whether and to what extent the distinct "[l]imitation on recovery" set out in section 1997e(e) also applies to punitive damages. *See Harris*, 216 F.3d at 975.

As explained below, section 3626(a) bars punitive damages for claims of the kind at issue here; and, while the text of section 1997e(e) is less than clear, the latter provision is most reasonably construed not to impose a partially overlapping and practically "useless" *additional* "[l]imitation on [the] recovery" of punitive damages. *See Woodford*, 548 U.S. at 93. Accordingly, Defendants turn first to section 3626(a).

A. Section 3626(a) bars punitive damages in this case.

As Hoever sees it, section 1997e(e) "does not apply to claims for punitive damages" because the limitation on recovery set out in that section pertains, by its "very nature," only to a "claim for *compensatory* damages," and "the purpose of *punitive* damages is not to compensate for an injury." Br. 7, 8 (alterations omitted; emphases in original). In assessing that argument, this Court should take into account section 3626's distinct limitation on "prospective relief," which is statutorily defined

to include "all relief other than compensatory monetary damages." *See* 18 U.S.C. § 3626(g)(7). The law of this Circuit holds that "[p]unitive damages are relief other than compensatory monetary damages" and that section 3626(a) therefore applies to punitive damages. *Johnson*, 280 F.3d at 1325. For the reasons set forth below, section 3626(a) bars punitive damages for claims of the kind at issue here, and section 1997e(e) need not and should not be construed to create a redundant and less effective version of that prohibition.

1. Section 3626 (a)(1)'s limitations apply here.

Section 3626(a)(1) limits "[p]rospective relief in any civil action with respect to prison conditions" by requiring that any prospective relief "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." To grant prospective relief, moreover, the court must "fin[d] that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1). And the court "shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Id.*

Section 3626's definitional provisions and this Court's precedent establish that Hoever's action qualifies as a "civil action with respect to prison conditions,"

and that his request for punitive damages is seeking "prospective relief." Thus, section 3626(a)(1)'s requirements apply to claims of the kind at issue here.

i. Prisoner suits like this one count as "civil action[s] with respect to prison conditions."

Section 3626(g)(2) defines "civil action with respect to prison conditions" as "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison." That definition encompasses suits, like this one, seeking damages under 42 U.S.C. §§ 1983 and 1985 based on claims that correctional officers violated a prisoner's constitutional rights while he was in custody. *See Johnson*, 280 F.3d at 1311, 1324; DE34, at 1.

In this case, for example, Hoever seeks relief for the effects of actions of government officials on his life while he has been confined in prison; he does not challenge the fact or duration of his confinement. DE34, at 11–12. Specifically, he asserts retaliation claims based on allegations that the correctional officer defendants retaliated against him for filing grievances. *Id.* This suit thus falls into the category of "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison." § 3626(g)(2).

Caselaw confirms that application of the text. The Supreme Court has not construed § 3626(g)(2). It has, however, construed the "simultaneously enacted" term "prison conditions" in the context of section 1997e. *Porter*, 534 U.S. at 525 n.3 (noting that the court "express[ed] no definitive opinion on the proper reading of § 3626(g)(2)").

In *Porter*, the Court held that "the PLRA's exhaustion requirement [in section 1997e] applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Id.* at 532; *see Lawrence v. Goord*, 304 F.3d 198, 200 (2d Cir. 2002) (applying, on remand following *Porter*, section 1997e to retaliation claim). The reasoning in *Porter* supports the conclusion that the term "prison conditions" in section 3626 also applies to "all inmate suits about prison life." *See, e.g.*, 534 U.S. at 528–31; *Booth v. Churner*, 206 F.3d 289, 295 (3d Cir. 2000), *aff'd*, 532 U.S. 731 (2001). Several courts have so applied it. *Handberry v. Thompson*, 446 F.3d 335, 344 (2d Cir. 2006) ("This action also addresses 'the effects of actions by government officials on the lives of persons confined in prison,' 18 U.S.C. § 3626(g)(2), because it challenges the adequacy of the defendants' provision of educational services and related ancillary services to inmates."); *Gomez v. Vernon*, 255 F.3d 1118, 1128 (9th Cir. 2001) (applying section 3626 to retaliation claim).

This Court has previously read the two provisions together. *E.g.*, *Higginbottom v. Carter*, 223 F.3d 1259, 1260-61 (11th Cir. 2000) (interpreting section 1997e and explaining that "18 U.S.C. § 3626(g)(2), which was amended as part of the same legislation as section 1997e, provides that the term 'civil action with respect to prison conditions' means any civil action arising under federal law 'with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison.' Thus, the plain language of the statute does include claims alleging excessive force."); *Ali v. Fed. Bureau of Prisons*, 204 F. App'x 778, 780 (11th Cir. 2006), *aff'd*, 552 U.S. 214 (2008) (interpreting "prison conditions" in section 1997e by referencing definition in section 3626(g)(2)). And the Court has held that, for example, excessive force claims are actions with respect to "prison conditions" under section 3626. *Johnson*, 280 F.3d at 1324 ("Thus, an essential premise of our holding in the *Higginbottom* case was that excessive force claims are 'prison conditions' claims for purposes of § 3626(g)(2). We reiterate that holding here.").[1]

[1] Other courts of appeals have also concluded that the term "prison conditions" in section 1997e and in section 3626 mean the same thing. *See, e.g.*, *Smith v. Zachary*, 255 F.3d 446, 448-49 (7th Cir. 2001) (explaining that "it makes good sense to assume that" the definition in section 3626(g)(2) applies to section 1997e because the provisions were "[a]mended on the same day" as "part of the same legislation" that "addresses the same subject," and "[b]oth sections are devoted to various aspects of prison litigation," with the "same overarching objectives"); *Castano v. Neb. Dep't of Corr.*, 201 F.3d 1023, 1024 (8th Cir. 2000) (opining that the term "'prison conditions' must be given the same meaning throughout the PLRA" and applying

ii. Section 3626(a) applies to claims for punitive damages

Hoever's request for punitive damages is a request for prospective relief to which section 3626(a)(1)'s requirements apply. Section 3626(g)(7) defines "prospective relief" as "all relief other than compensatory money damages," and section 3626(g)(9) defines "relief" as "*all relief in any form* that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements." (emphasis added). In *Johnson*, this Court correctly held that "punitive damages are prospective relief" under section 3626(g)(7), as "[t]he plain language of that definition provision is clear": "[p]unitive damages are relief other than compensatory monetary damages." 280 F.3d at 1325; *see Vaughn v. Cambria Cty. Prison*, No. 3:16-cv-249, 2016 WL 10704516, at *2 (W.D. Pa. Dec. 16, 2016), *aff'd in part, vacated in part on other grounds*, 709 F. App'x 152 (3d Cir. 2017) (explaining that "[p]unitive damages are by definition not compensatory damages and do not 'correct a violation' of a plaintiff's rights; punitive damages are awarded as punishment, to deter future wrongful conduct by a defendant."). Hoever agrees

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section 3626(g)(2)'s definition to section 1997e); *Freeman v. Francis*, 196 F.3d 641, 643-44 (6th Cir. 1999) (explaining that "[i]t is generally recognized that when Congress uses the same language in two different places in the same statute, the words are usually read to mean the same thing in both places," and applying section 3626(g)(2)'s definition to exhaustion requirement in section 1997e); *Booth v. Churner*, 206 F.3d 289, 294-95 (3d Cir. 2000), *aff'd*, 532 U.S. 731 (2001) (holding that "[b]ecause these two sections of the PLRA are directed towards similar ends and are thus substantially related, . . . the identical terms used in the two sections should be read as conveying the same meaning").

that punitive damages are not compensatory in nature. *See* Br. 5-6 (explaining that punitive damages are "not compensation"). Indeed, his construction of section 1997e(e) is based, in large part, on that proposition.[2] *See* Br. 5–9.

Because the plain text of the PLRA resolves this question, the Court need not and should not rely on legislative history. *See Harris*, 216 F.3d at 976–78. Even if that history were relevant, however, it supports the conclusion that Congress intended to make non-compensatory monetary damages subject to the strict limitations of section 3626. An interim version of the PLRA introduced on the Senate floor defined "prospective relief" more narrowly as "all relief other than monetary damages," omitting the term "compensatory." 141 Cong. Rec. 26,450 (1995). That narrower language would not have included punitive damages because they are "monetary damages." The version of the legislation subsequently approved by the Senate broadened the scope of section 3626 by adding the word "compensatory." *See* § 3626(g)(7).

[2] There is no persuasive basis for arguing that punitive damages are "compensatory monetary damages" for purposes of section 3626(g)(7), but are not "compensatory" monetary damages for purposes of analyzing the nature and scope of section 1997e(e). In addition, any such holding would threaten to blow a hole in the PLRA's remedial scheme: The act would then "severely circumscribe[]" the recovery of compensatory damages (via section 1997e(e)), *Smith*, 502 F.3d at 1271, and impose "strict limitations" on declaratory and injunctive relief (via section 3626(a)), *Johnson*, 280 F.3d at 1323, but impose no limits at all on the recovery of punitive damages.

2. Section 3626(a)(1) bars punitive damages in cases of this kind.

a. Because this is a "civil action with respect to prison conditions," and because Hoever's punitive damages claim is one for "prospective relief" within the meaning of the PLRA, the "strict limitations" of section 3626(a)(1) apply here. *Johnson*, 280 F.3d at 1323. Properly understood, the statute bars punitive damages in a case of this kind.

Under the PLRA, a punitive damages award must be "necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. § 3626(a)(1). To grant prospective relief, moreover, the court must "fin[d] that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." *Id.* And the court "shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Id.*

As a categorical matter, punitive damages cannot satisfy those strict requirements. Several considerations support that conclusion.

First, punitive damages are never "necessary to correct the violation of" a Federal right. "In the strictest sense of the term, something is 'necessary' only if it is essential." *Ayestas v. Davis*, 138 S. Ct. 1080, 1093 (2018) (citing Webster's Third New International Dictionary 1510 (1993); 10 Oxford English Dictionary 275–276

(2d ed. 1989)); *see also Necessary*, Black's Law Dictionary (11th ed. 2019) (defining necessary to mean "essential"). And the text and context of § 3626(a) indicate that Congress intended to use the term "necessary" in the strict sense of that word. Unlike the "necessary and proper clause" of Article I, Section 8, for example, section 3626 uses the term "necessary" in the context of a "strict limitation[]," not a broad authorization. *See Johnson*, 280 F.3d at 1323. Similarly, the immediately surrounding text provides that relief is barred unless it is "narrowly drawn," "extends no further than necessary to correct the violation of the Federal right," and is "the least intrusive means necessary to correct the violation of the Federal right." § 3626(a)(1).

Punitive damages, however, are not even an appropriate mechanism for "correcting" a legal violation; to the extent that damages serve a "corrective" function, that is what compensatory damages are for. By definition, "compensatory damages" are "[d]amages *sufficient* in amount to indemnify the injured person for the loss suffered." *Damages*, Black's Law Dictionary (11th ed. 2019) (emphasis added). Accordingly, punitive damages are not even intended to "correct" a legal violation by making the injured party whole; still less are they an "essential" way of making the plaintiff whole.

Consistent with dictionary definitions, caselaw recognizes that punitive damages awards serve two purposes, "punishing unlawful conduct and deterring its

repetition." *State Farm Mut. Auto Ins. Co v. Campbell*, 538 U.S. 408, 416 (2003) (quotation omitted). Hoever agrees. *See* Br. 8 ("[T]he purpose of *punitive* damages is not to compensate for an injury (physical, mental, or otherwise) or to make the plaintiff whole, but to penalize misconduct and deter it in the future.").[3] Neither of those purposes makes punitive damages "necessary to correct" a violation of Federal law. By definition, one may "correct" a violation of law without "penalizing" past misconduct or "deterring" potential future violations.

Ordinary English usage confirms that proposition. For example, one does not "correct" a *future* error before it happens; one seeks to deter it—i.e., to prevent it from happening in the first place. Likewise, punishment is not strictly necessary to remedy a wrong; instead, punishment serves other goals like deterrence or retribution. *Cf. Kokesh v. S.E.C.*, 137 S. Ct. 1635, 1642 (2017) (distinguishing between remedies that are penalties, i.e. those that seek to punish, and those that seek to "compensate[e] a victim for his loss").

Second, even if an award of punitive damages could be thought *reasonably* "necessary" to correct a legal violation, such an award could not satisfy the additional, stringent limitations imposed by the PLRA—i.e., the requirements that

[3] *See also* Br. 5-6 (contending that punitive damages here would be "aim[ed] at punishment and deterrence, not compensation"); Br. 9 ("[P]unitive damages are 'for' deterrence and retributive justice, a wholly separate function from compensation 'for . . . injury.'").

the relief be "*narrowly* drawn," "extend[] *no further than necessary* to correct the violation of the Federal right," and be "*the least intrusive means necessary* to correct the violation of the Federal right." § 3626(a)(1) (emphases added); *see United States v. Whyte*, 928 F.3d 1317, 1328 (11th Cir. 2019) (explaining that it is a "cardinal rule" of statutory interpretation that courts try to give "effect . . . to every clause . . . of a statute") (citation and internal quotation marks omitted)); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 174 (2012) ("If possible, every word and every provision is to be given effect.").

For example, even if deterring future violations is conceptualized as one way of "correct[ing]" "the" already completed "violation" at issue in a section 1983 suit for damages, punitive damages are never the "narrow[est]" or "least intrusive" way of effectuating such a correction. As the Supreme Court has explained, "[d]eterrence is . . . an important purpose of" the tort system created by section 1983, but such deterrence primarily "operates through the mechanism of damages that are *compensatory*—damages grounded in determinations of plaintiffs' actual losses." *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (emphasis in original). Similarly, the Supreme Court has made "clear" that "nominal damages," not punitive damages, "are the appropriate means of 'vindicating' rights whose deprivation has not caused actual, provable injury." *Id.* at 308 n.11. Even assuming

punitive damages are also an "appropriate" means of vindicating such rights, they are not less burdensome than nominal damages or declaratory relief.

Moreover, reading section 3626 to categorically bar punitive damages does not prevent the court from fully remediating ongoing violations. True enough, in many civil actions with respect to prison conditions, a plaintiff alleges that his federal rights are being violated on an ongoing basis: for example, a plaintiff is being prevented from practicing his religion or from using the law library. In those cases, prospective relief may be warranted—for example, in the form of declaratory or injunctive relief that requires prison officials to "correct" their violation by bringing their conduct into conformity with the law. As this Court has explained, albeit in the context of interpreting section 1997e(e), such relief provides a "reasonably adequate opportunity" to seek redress for constitutional violations," even if prisoners "may not recover monetary damages for such claims." *Al-Amin v. Smith*, 637 F.3d 1192, 1197 (11th Cir. 2011) (quotation marks and citation omitted).

What is more, to clear the high bar of the PLRA, relief other than compensatory monetary damages must extend "no further than necessary to correct the violation of the Federal right *of [the] particular plaintiff or plaintiffs*." 18 U.S.C. § 3626(a)(1) (emphasis added). Punitive damages awards aimed at protecting inmates generally (e.g., through deterrence), rather than correcting the violations suffered by the particular plaintiff bringing the suit, are thus prohibited. Moreover,

not only must punitive damages awards be plaintiff-specific, they must be defendant-specific. Section 3626(a)(1) requires that they be "narrowly drawn," which means that any deterrent must be aimed at deterring the particular defendant, not the correctional facility or government in general.[4]

Third, the "general scheme" of the PLRA supports the conclusion that section 3626(a) categorically bars punitive damages in a case of this kind. *See Woodford*, 548 U.S. at 93; *see also Al-Amin*, 637 F.3d at 1197 (explaining that "Congress has wide latitude to decide how violations of [federal] rights shall be remedied" and that by enacting the PLRA Congress "has chosen to enforce prisoners' constitutional rights through suits for declaratory and injunctive relief, and not through actions for damages.") (quotation marks and citation omitted).

Section 1997e(e), for example, expressly bars prisoners from obtaining certain damages that are demonstrably necessary to correct (i.e., compensate for) actual, provable injuries—i.e., "mental or emotional injur[ies]" that are not accompanied by a "prior showing of physical injury or the commission of a sexual act." *See* 42 U.S.C. § 1997e(e); *Carey v. Piphus*, 435 U.S. 247, 263–64 (1978) (explaining that mental and emotional distress are "familiar to the law" and "customarily proved by showing

[4] In suits, like this one, brought under 42 U.S.C. § 1983, an award of punitive damages runs only against the individual defendant in his personal capacity. *See Colbin v. McDougall*, 62 F.3d 1316, 1319 (11th Cir. 1995) (explaining that government officials are immune from professional capacity punitive damages awards).

the nature and circumstances of the wrong and its effect on the plaintiff"). Having imposed that severe limitation on the recovery of compensatory relief needed to make some prisoners whole, it is hard to see why Congress would then allow those same prisoners to recover a comparative windfall in the form of punitive damages that, by definition, are not intended or needed to make those prisoners whole. *See Woodford*, 548 U.S. at 95, 96 (expressing "confiden[ce]" that the PLRA did not create a "toothless scheme," finding it "doubtful that Congress thought" a proposed interpretation of the statute "would provide much of a deterrent" to filing prisoner lawsuits, and reasoning that a contrary interpretation was "unlikely to be sufficient to alter the conduct a prisoner whose objective is to bypass" the procedural constraints of the PLRA).[5]

Other sections of the PLRA support the conclusion that section 3626(a)(1) bars punitive damages. For example, when Congress created a mechanism to reappropriate funds recovered by prisoners in litigation to compensate their victims, it did not include punitive damages. *See* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104–134, 110 Stat 1321 (1996), *codified as*

[5] This is especially true because punitive damages are more controversial than compensatory damages, as evidenced by criticism from both the courts, *e.g.*, *State Farm*, 538 U.S. at 417–18; *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415, 432 (1994), and scholars, *e.g.*, Kip Viscusi, *The Social Costs of Punitive Damages Against Corporations in Environmental and Safety Torts*, 87 Geo. L.J. 285, 322 (1998).

statutory note to 18 U.S.C. § 3626 ("Any compensatory damages awarded to a prisoner in connection with a civil action brought against any Federal, State, or local jail, prison, or correctional facility or against any official or agent of such jail, prison, or correctional facility, shall be paid directly to satisfy any outstanding restitution orders pending against the prisoner. The remainder of any such award after full payment of all pending restitution orders shall be forwarded to the prisoner."); *see also Anderson v. Singletary*, 111 F.3d 801, 805 (11th Cir. 1997) ("[S]ection 807" of the PLRA "provides that any compensatory damages a prisoner receives in connection with a civil action shall be paid directly to satisfy any outstanding restitution orders"); *Farella v. Hockaday*, 304 F. Supp. 2d 1076, 1079 (C.D. Ill. 2004) (applying this statutory note). It seems unlikely that Congress intended for prisoners to retain punitive damages awards while forfeiting awards of compensatory damages. The better view is that Congress did not include punitive damages awards in the scheme because it barred them in section 3626.

Similarly, section 3626(b)(1)(A) provides that prospective relief "shall be terminable upon the motion of any party or intervener" after certain time periods, while section 3626(b)(2) provides for the "immediate termination of any prospective relief if the relief was approved or granted in the absence of" the requisite findings. Because punitive damages may not practicably be modified or terminated after they

have been paid, those provisions support the inference that an award of punitive damages is not the kind of prospective relief available under the PLRA.[6]

Finally, a contrary ruling would subvert the "overriding goal" of the PLRA—"to reduce the number of [prisoner] cases *filed*." *Harris*, 216 F.3d at 977, 978 (emphasis in original). As the en banc Court has explained, Congress was concerned that prisoners have much to gain and little to lose by filing lawsuits. *Id.* at 978 (citing, *e.g.*, 141 Cong. Rec. S7498–01, S7524 (daily ed. May 25, 1995) (statement of Sen. Dole) ("[P]risoners will now 'litigate at the drop of a hat,' simply because they have little to lose and everything to gain." (quoting Chief Justice Rehnquist)).

The potential for large punitive damages awards plainly implicates that concern: "[T]he prospect of punitive damages provides a major financial incentive" for prisoner litigation. *Brooks v. Warden*, 800 F.3d 1295, 1308 (11th Cir. 2015); *see Dawes v. Walker*, 239 F.3d 489, 497 (2d Cir. 2001) (Walker, C.J., writing separately) ("The potential for a windfall punitive award—no matter how remote—provides a

[6] It could be argued that the modification and termination provisions support a different conclusion: that punitive damages should be judicially excised from the broad statutory definition of "prospective relief." But that argument ignores the plain text of the definition Congress included in section 3626(g)(7). And it would make a mess of the statutory scheme—inexplicably exempting punitive damages from the PLRA's strict limitations on virtually all other forms of relief. Finally, interpreting the statute to bar punitive damages in cases subject to section 3626(a)(1) eliminates any potential concern that punitive damages awards would not ordinarily be modified or terminated, because there would be no award of punitive damages subject to subsequent modification or termination.

powerful economic incentive for prisoners to continue to file frivolous § 1983 claims based on concocted or imagined emotional injuries."), *overruled on other grounds as recognized by Phelps v. Kapnolas*, 308 F.3d 180, 187 n.6 (2d Cir. 2002). Conversely, "prisoners are presumably a good deal less likely to embark on a lawsuit if there is no prospect of a pecuniary reward." *Davis v. District of Columbia*, 158 F.3d 1342, 1349 (D.C. Cir. 1998).

Hoever admitted as much in the proceeding below. At trial, he repeatedly argued that the jury should credit his testimony, notwithstanding the competing testimony of Defendants denying his accusations, because Hoever could not get any money out of the case and had nothing to gain from bringing this suit and exposing himself to further retaliation. That argument reflects the commonsense notion that the prospect of "getting money" gives a prisoner "reason to" to make false but hard-to-disprove allegations of retaliation. *See* Tr. 615:04–09, 620:17–19; *Hoever v. Andrews*, No. 4:14CV274-MW/CAS, 2014 WL 11429306, at *1 (N.D. Fla. Dec. 12, 2014) ("Recognizing 'both the near inevitability of decisions and actions by prison officials to which prisoners will take exception and the ease with which claims of retaliation may be fabricated, [courts must] examine prisoners' claims of retaliation with skepticism and particular care.'") (quoting *Flaherty v. Coughlin*, 713 F.2d 10, 13 (2d Cir. 1983)).

As the en banc court has already determined, the PLRA does not just aim to weed out "frivolous" or "meritless" claims. *See* Br. 11–13; *Harris*, 216 F.3d at 977–78 (holding that, in enacting section 1997e(e), "Congress made confinement status at the time of *filing* the decisive factor," and thus barred actions for meritorious claims that the PLRA allows to be filed after a prisoner's release from custody). Indeed, that goal has no application to the two provisions at issue here—both of which limit the availability of *relief*. *See* § 1997e(e) (imposing "[l]imitation on recovery" of damages); § 3626(a) (limiting availability of "prospective relief" as defined). A prisoner bringing frivolous or transparently meritless claims would not obtain any relief even if Congress had not enacted sections 1997e(e) or 3626(a). Accordingly, it makes no sense to argue that those provisions have the sole purpose of weeding out frivolous or meritless claims. *See Harris*, 216 F.3d at 977.

If, so far as punitive damages are concerned, the specific limits set out in section 3626(a) must be presented to, and resolved by, a factfinder in every case, those limits would do little—if anything—to deter prisoners from instituting litigation in the first place. Of course, that policy concern does not justify depriving prisoners of remedies to which they are legally entitled. Like other provisions of the PLRA, however, the text of section 3626(a) reflects Congress's judgment that prisoner litigation should be limited to suits that are strictly "necessary" to vindicate actual, provable injuries. Allowing case-by-case litigation on the availability of

windfall punitive damages awards cannot be reconciled with that considered congressional policy judgment.

It is no answer to say that Congress could have specifically prohibited awards of punitive damages instead of enacting more general limitations that have the legal effect of prohibiting such awards. One might just as well argue that Congress could have specifically authorized awards of punitive damages in the statutes creating and governing this section 1983 action—which it has never done. If courts may infer Congress's intent to authorize the recovery of punitive damages from common-law sources, they may surely consult generally phrased but legislatively enacted principles in determining whether that judicially inferred intent survives the enactment of the PLRA. *See, e.g.*, *Snapp v. Unlimited Concepts, Inc.*, 208 F.3d 928, 939 (11th Cir. 2000) (concluding that the FLSA anti-retaliation provision does not permit punitive damages from the general legislative scheme).

b. In *Johnson v. Breeden*, this Court made an effort to "give the requirements of § 3626(a)(1)(A) some meaning in the context of punitive damages." *See* 280 F.3d 1308, 1325 (11th Cir. 2002), *abrogated on other grounds by Kingsley v. Hendrickson*, 576 U.S. 389 (2015). In Defendants' view, the Court should revisit *Johnson* and hold that section 3626 bars recovery of punitive damages in cases subject to that section. At a minimum, the Court should recede from *Johnson* to the extent that it concluded that punitive damages are available under section 3626 for

general deterrence purposes, rather than deterrence that is specific to the particular plaintiff and the particular defendant.

Consistent with the plain language of the PLRA, *Johnson* correctly held that punitive damages "are relief other than compensatory monetary damages" and therefore subject to the "strict limitations" set out in section 3626(a). *See id.* at 1324, 1325 Without citation to any authority or analysis of the statutory text, however, the *Johnson* court opined that section 3626's requirements "mean that a punitive damages award must be no larger than *reasonably necessary* to *deter* the *kind of violations* of the federal right that occurred in the case. They also mean that such awards should be imposed against no more defendants than necessary to serve that deterrent function and that they are the least intrusive way of doing so." 280 F.3d at 1325 (emphases added). The Court further asserted that "[m]any factors may enter into that determination. For example, the number of . . . violations an individual defendant or institution has had might affect whether punitive damages were necessary, and if so, the amount required to deter future violations." *Id.* The Court then remanded for the district court to determine whether punitive damages were "reasonably necessary . . . in order to deter future [constitutional] violations by them or others at th[e] institution." *Id.*

Defendants respectfully submit that the Court's reading of section 3626(a)(1) swept more broadly than section 3626(a)(1)'s text. Instead of requiring that punitive

damages (as prospective relief) extend no further than "necessary" to correct the violation of a federal right of the "particular plaintiff," the Court loosened that requirement to allow punitive damages awards that are "no larger than reasonably necessary to deter the *kind of violations of the federal right that occurred in the case*." *Id.* (emphasis added). The Court also thought it relevant to consider the number of violations an "institution has had," as it might "affect . . . the amount required to deter future violations," another example of untethering section 3626(a)(1)'s requirement that relief extend no further than necessary to correct violations to a "particular plaintiff." *Id.*

District courts in this Circuit have followed *Johnson*'s lead, and have awarded punitive damages awards even when deterrence was either not necessary or not intended to correct the particular violation at issue. *See Benton v. Rousseau*, 940 F. Supp. 2d 1370, 1380 (M.D. Fla. 2013) (awarding punitive damages to "deter [d]efendants from taking similar actions in the future" even though defendants were no longer employed by the institution); *Hudson v. Singleton*, No. CV602-137, 2006 WL 839339, at *2 (S.D. Ga. Mar. 27, 2006) (recognizing that "the imposition of punitive damages will likely have no deterrent effect on these particular Defendants . . . [but it] may very well deter current and future [prison] employees from using excessive force against an inmate in the future"); *Key v. Kight*, No. 6:14-cv-39, 2017 WL 915133, at *8 (S.D. Ga. Mar. 8, 2017), *rep't & rec. adopted*, 2017 WL 1128601

(S.D. Ga. Mar. 24, 2017) (awarding punitive damages and concluding that even though defendant was fired and "he is no longer in a position to assault those under his charge," punitive damages would be "a sufficient deterrent to prevent [defendant] from acting in the same or similar manner in the future"). Thus, clarifying the requirements of section 3626(a)(1) here is important.

In short, the test set out in *Johnson* does not track the text of the PLRA, and subsequent experience has shown that its approach subverts rather effectuates the "overriding goal" of the Act. Hence, this Court should revisit *Johnson* and hold that punitive damages are categorically barred by the stringent limitations set out in section 3626(a).

3. Section 3626(a)(1)'s limitations bar the recovery of punitive damages in this case.

Even as construed by *Johnson*, section 3626(a)(1) bars Hoever's request for punitive damages. Hoever is entitled to punitive damages only if such an award would be "narrowly drawn," would "extend[] no further than necessary to correct the violation of [Hoever's] Federal right," and would be "the least intrusive means necessary to correct the violation of [Hoever's] Federal right." But because Hoever seeks punitive damages only for alleged *past*, *completed* violations of his rights, and because Defendants are no longer employed at his correctional facility, a punitive damages award would not meet those requirements—just as injunctive relief would be inappropriate here. *See* DE51, at 11–13; DE57, at 1. Because punitive damages

cannot "correct" past violations of Hoever's rights but only punish for them and potentially deter future, hypothetical violations by other correctional officers, punitive damages are unavailable under section 3626(a)(1). Such an award would by definition "extend[] . . . further than necessary to correct the violation of" Hoever's rights.[7]

B. Construed in light of Section 3626(a)(1), Section 1997e(e) does not bar punitive damages for constitutional claims, including First Amendment claims, without a prior showing of physical injury or the commission of a sexual act.

Like section 3626 of Title 18, section 1997e(e) of Title 42 "places substantial restrictions on the judicial relief that prisoners can seek." *Brooks*, 800 F.3d at 1307. Section 1997e(e) provides in full:

> **(e) Limitation on recovery**
>
> No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury

[7] This Court "may affirm the district court's ruling on any basis the record supports." *Fla. Wildlife Fed'n Inc. v. U.S. Army Corps of Eng'rs*, 859 F.3d 1306, 1316 (11th Cir. 2017). It "may do so 'regardless of the grounds addressed, adopted or rejected by the district court.'" *Id.* Indeed, even in en banc proceedings, the Court's "role is to determine whether the plaintiff before the court is entitled to relief." *Carter v. Allen*, 940 F.3d 1233, 1234 (11th Cir. 2019) (W. Pryor, J., respecting the denial of rehearing en banc). And, for the reasons discussed above, Hoever is not entitled to relief because section 3626(a)(1) bars the recovery of punitive damages in this case. Finally, a three-judge panel of this Court would not be free to reassess *Johnson*'s proposed test for applying section 3626(a)(1) to punitive damages, so it makes sense for the en banc Court to assess both provisions in determining whether and to what extent the PLRA bars punitive damages. Accordingly, even if the Court decides to remand for application of section 3626(a)(1)'s requirements here, it should clarify the standard to be applied.

> suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of Title 18).

Consistent with the operative text, the title of the provision explains that section 1997e(e) is a "[l]imitation on"—and not an authorization of—"recovery."

Relying on this Court's precedents, the panel held that section 1997e(e) bars Hoever's claim for punitive damages. Hoever argues that this Court's cases construing section 1997e(e) should be overruled for two independent reasons: first, because section 1997e(e) "does not apply to First Amendment claims at all" (Br. 6); and second, because section 1997e(e) "does not apply to claims for punitive damages" (Br. 7, alterations omitted). The following discussion considers each argument in turn.

1. Section 1997e(e) applies to First Amendment claims.

Hoever argues that section 1997e(e) "does not apply to First Amendment claims at all." Br. 6. That contention lacks merit.

As noted, section 1997e(e) provides:

> 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 or the commission of a sexual act (as defined in section 2246 of Title 18).

That limitation, by its terms, applies to any "Federal civil action . . . for mental or emotional injury," regardless whether such an injury arises out of an alleged violation of the First Amendment. In other words, "Section 1997e(e) unequivocally

states that '*No* Federal Civil Action may be brought'" in certain circumstances, and "'no' means no." *Harris*, 216 F.3d at 984–85. That "broad statutory language does not permit [courts] to except any type of claims, including constitutional claims." *Id.* (internal citation omitted); *accord Al-Amin*, 637 F.3d at 1197 ("constitutional claims are not treated as exceptional by the PLRA").

This case illustrates that section 1997e(e) has at least some application to First Amendment claims. Hoever's complaint alleged that he suffered "mental anguish" and "personal humiliation" "[a]s a result of Defendants' actions" (DE34, at 12), and he requested "[c]ompensatory damage[s] . . . for the injuries and pain and suffering" he alleged (DE34, at 13). Even if Hoever is right that section 1997e(e) applies only to claims for compensatory damages (*e.g.*, Br. 8), the district court correctly dismissed Hoever's complaint insofar as he sought compensatory damages for "mental . . . injury" resulting from the First Amendment claim brought in his complaint, "without a prior showing of physical injury or the commission of a sexual act."

In short, the text of the statute forecloses Hoever's argument that section 1997e(e) "does not apply to First Amendment claims at all" (Br. 6).

A prisoner may not circumvent the bar set out in section 1997e(e) by urging that, even if the statute applies to First Amendment *claims*, it "does not apply to First Amendment *injuries*." Br. 13 (emphasis added). Hoever's argument to the contrary

misapprehends how the PLRA interacts with limitations already baked into Section 1983, and it fails to give effect to the text and purpose of section 1997e(e).

As its text and title make clear, section 1997e(e) is a "[l]imitation on"—and not an authorization of—"recovery." *See* 42 U.S.C. § 1997e(e). Thus, a prisoner seeking damages under section 1983 must satisfy the requirements of that statute as well as the "strict" and "severe[]" limitations imposed by the PLRA. *See Johnson*, 280 F.3d at 1323; *Smith*, 502 F.3d at 1271.

Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983.

As the Supreme Court has explained, "the basic purpose of a § 1983 damages award" is "to compensate persons for injuries caused by the deprivation of constitutional rights." *Carey*, 435 U.S. at 254. "Rights, constitutional and otherwise, do not exist in a vacuum." *Id.* Rather, "[t]heir purpose is to protect persons from injuries to particular interests." *Id.* Consistent with that understanding, "damages are available under [§ 1983] for actions 'found . . . to have been violative of . . .

constitutional rights *and to have caused compensable injury*." *Id.* at 255 (emphasis in original; quotation marks omitted).

As that formulation makes clear, a violation of "constitutional rights" does not, by itself, establish a "compensable injury" for purposes of section 1983. *See id.* Instead, a plaintiff seeking substantial (as opposed to nominal) damages must show actual, provable injury. *See Stachura*, 477 U.S. at 308 n.11.

What is more, "damages based on the abstract 'value' or 'importance' of constitutional rights are not a permissible element of compensatory damages" under section 1983. *Stachura*, 477 U.S. at 310; *see Flanigan's Enters., Inc. of Ga. v. City of Sandy Springs*, 868 F.3d 1248, 1266 (11th Cir. 2017) (en banc). That limitation on compensation applies to First Amendment claims. *See Stachura*, 477 U.S. at 301–02, 309–10 (applying aforementioned "hold[ing]" to case in which respondent sought compensatory and punitive damages for suspension alleged to violate respondent's "First Amendment right to academic freedom" as well as his right not to be deprived of liberty and property without due process, in violation of the Fourteenth Amendment).

In light of those limitations, Hoever is wrong that section 1997e(e) "does not apply to First Amendment injuries at all." Br. 13. As Hoever sees it, "[a]n injury to one's First Amendment interests is neither a mental nor an emotional injury," but "is instead a separate category of harm—an injury to a fundamental liberty." *Id.* But that

framing overlooks how section 1997e(e) interacts with the limitations governing recovery of substantial damages in suits brought under section 1983. The Supreme Court has "held that damages based on the abstract value or importance" of the liberties protected by the First Amendment are "simply not recoverable in a case brought under 42 U.S.C. § 1983 because § 1983 damages are limited to those designed to compensate injuries caused by the constitutional deprivation." *Flanigan's*, 868 F.3d at 1266 (quoting *Stachura*, 477 U.S. at 309–10) (quotation marks omitted). Contrary to Hoever's assertion, section 1997e(e) does "apply to First Amendment injuries" (Br. 13) that a prisoner asserts as a basis for compensation, because it provides that not all otherwise compensable "injuries" caused by First Amendment violations are compensable under the PLRA. Rather, to the extent that a prisoner complains of injuries that are fairly denominated as "mental or emotional," the prisoner may not recover substantial damages "for" such injuries "without a prior showing of physical injury or the commission of a sexual act." 42 U.S.C. § 1997e(e).

In other words, cases holding that section 1997e(e) applies to First Amendment claims need not and should not be read to rest on the view that "harm to fundamental First Amendment liberty" is "mere 'mental or emotional injury'" (Br. 14). Instead, those cases apply Supreme Court caselaw holding that an asserted "harm to fundamental First Amendment liberty"—even insofar as that harm

encompasses injuries other than "mental or emotional injury"—does not, by itself, suffice to establish a compensable injury under section 1983.

Hoever hurts rather than helps his cause by urging the Court to treat First Amendment violations as "injuries to personal liberty" (Br. 15). Under the Supreme Court's caselaw, a prisoner bringing a section 1983 suit may not recover damages "based on the abstract 'value' or 'importance'" of the federal rights sought to be vindicated—even if the plaintiff's asserted injuries are couched in terms of rights specifically protected by the First Amendment. *Stachura*, 477 U.S. at 310. Recharacterizing so-called "First Amendment injuries" at an even *higher* level of abstraction—i.e., branding them as "injuries to personal liberty"—would make it harder rather than easier for a prisoner to show compensable injury under section 1983. *See id.* at 309–10.

Hoever does not gain any ground by quoting loose language about the availability of judicial relief for constitutional violations. For example, Hoever cites out-of-circuit caselaw for the proposition that "[a] prisoner is entitled to judicial relief for a violation of his First Amendment rights aside from any physical, mental, or emotional injury he may have sustained." Br. 14 (quoting *Rowe v. Shake*, 196 F.3d 778, 781–82 (7th Cir. 1999)). Applying section 1997e(e) to First Amendment claims does not strip prisoners of all forms of "judicial relief" for First Amendment violations. *Al-Amin*, 637 F.3d at 1195–97. At any rate, the "violation" of a First

Amendment right does not entitle a prisoner to substantial damages in a suit under section 1983.

Similarly, it is no answer to say that "[t]he right to First Amendment freedoms is one of the 'absolute' rights . . . for which no proof of consequential harm is required to establish a violation." Br. 13 (quotation marks and citation omitted). For purposes of applying the PLRA's "[l]imitation on recovery," the issue is not whether a prisoner must show "consequential harm" to establish a First Amendment *violation*, but whether he must show such harm to recover substantial (as opposed to nominal) *damages* for such a violation. *See Carey*, 435 U.S. at 255 (explaining that "damages are available under [§ 1983] for actions 'found . . . to have been violative of . . . constitutional rights *and to have caused compensable injury*") (emphasis in original; quotation marks omitted).

Hoever's reliance on an 1891 treatise is unpersuasive. As Hoever sees it, that treatise supports the proposition that "the common law affords *a remedy*" "*in a proper case*" for, among other harms, "[i]njuries to personal liberty" as well as "[m]ental injuries." Br. 15 (emphases added). The same could be said of a suit brought under section 1983 and subject to the constraints of the PLRA. A prisoner may obtain declaratory and injunctive relief and/or compensatory damages "in a proper case"—i.e., in a case when the prisoner satisfies applicable statutory requirements. *Al-Amin*, 637 F.3d at 1197. And, even when those forms of relief are

not available, nominal damages are an appropriate "remedy" when a prisoner has failed to show actual, provable injury. *See Brooks*, 800 F.3d at 1307–09. At any rate, a treatise on the common law published in 1891 does not shed much light on the meaning of a law passed by Congress in 1871; and still less could such a treatise license a lower court to cast aside limits set forth in that statute as construed by the Supreme Court.

2. Section 1997e(e) neither authorizes nor bars recovery of punitive damages.

The law of this Circuit holds that "the PLRA precludes the recovery of punitive damages in the absence of physical injury." *Al-Amin*, 637 F.3d at 1199. In Defendants' view, that statement of law is overinclusive and underinclusive. It is overinclusive because section 1997e(e), when viewed in the context of the PLRA as a whole, is most reasonably construed not to categorically preclude the recovery of punitive damages for any kind of violation, constitutional or statutory, absent a showing of physical injury or the commission of a sexual act. And it is underinclusive because "the PLRA," taken as a whole, does not just "preclude[] the recovery of punitive damages in the absence of physical injury"; it "precludes the recovery of punitive damages" altogether in a case of this kind. At a minimum, the law of this Circuit holds that a different provision of the PLRA already imposes "strict limitations" on a prisoner's recovery of punitive damages, and this Court should take those strict limitations into account in deciding whether and to what

extent section 1997e(e) imposes a related and overlapping "[l]imitation on [the] recovery" of punitive damages.

a. Hoever argues that section 1997e(e) "permits punitive damages for First Amendment violations, regardless of any connection to a physical injury." Br. 5; *see also id.* at 17 (asserting that "Hoever's right to seek punitive damages therefore turns *only* on the issues" pertaining to the interpretation of section 1997e(e)) (emphasis added). But section 1997e(e) is a "[l]imitation on"—and not an authorization of—"recovery." Thus, the statute does not affirmatively authorize an award of punitive damages—regardless of whether such a recovery is barred by section 1997e(e).

b. "It is not easy to say precisely what it means for a claim"—or a civil action—"to be 'for' mental or emotional injury." *Carter v. Allen*, 940 F.3d 1233, 1235 (11th Cir. 2019) (W. Pryor, J., respecting the denial of rehearing en banc); *see also Aref v. Lynch*, 833 F.3d 242, 263 (D.C. Cir. 2016) ("Section 1997e(e) 'may well present the highest concentration of poor drafting in the smallest number of words in the entire United States Code'") (quoting John Boston, *The Prison Litigation Reform Act: The New Face of Court Stripping*, 67 Brook. L. Rev. 429, 434 (2001)). The better view, however, is that section 1997e(e) does not categorically bar claims for punitive damages, regardless of whether those claims are based on statutory or constitutional violations, without a prior showing of physical injury or the commission of a sexual act. Three considerations support that conclusion.

First, as explained above, a different provision of the PLRA already imposes "strict limitations" on all forms of relief other than compensatory monetary damages, and that provision operates to bar a prisoner from recovering punitive damages in a case of this kind. It would be odd for section 1997e(e) to impose a partially overlapping and altogether "useless" *additional* "[l]imitation on recovery" of punitive damages when another part of the same act categorically prohibits such recovery. *See Woodford*, 548 U.S. at 93 (assessing proposed interpretation of section 1997e(a) in light of "the general scheme of the PLRA" and rejecting an interpretation "would turn that provision into a largely useless appendage"); *Harris*, 216 F.3d at 974–75 (construing section 1997e(e) in light of precedent addressing other provisions of the PLRA).

Second, the overwhelming weight of judicial authority holds that the phrase "civil action . . . *for* mental or emotional injury" is best understood to address compensatory rather than punitive damages. *See Carter*, 940 F.3d at 1235 (W. Pryor, J., regarding the denial of rehearing en banc) (citing cases from "nine circuits"); *id.* at 1237–39 (Martin, J., dissenting from denial of rehearing en banc).

Third, reading section 1997e(e) narrowly in light of section 3626(a) harmonizes the competing considerations that have split the federal courts of appeals. As most circuits have found, there are sound reasons for concluding that "punitive damages for violations of what the Supreme Court has called 'absolute

rights'—that is, those rights for which no proof of consequential harm is required to establish a violation—are not 'for mental or emotional injury suffered' any more than are nominal damages in the same context." *Carter*, 940 F.3d at 1235 (W. Pryor, J., respecting denial of rehearing en banc) (internal citation and quotation marks omitted); *id.* at 1240–41 (Martin, J., dissenting from denial of rehearing en banc). As this Court and the D.C. Circuit have recognized, however, it would make no sense for Congress to bar prisoners from recovering certain *compensatory* damages for intangible injuries—damages that are both provable and necessary to make those aggrieved prisoners whole—while allowing the very same prisoners to recover substantially larger sums in the form of windfall *punitive* damages awards that, by definition, are not necessary to make the prisoner whole. *See Al-Amin*, 637 F.3d at 1197; *Davis*, 158 F.3d at 1348. Indeed, exempting punitive damages awards from the PLRA's limitation on recovery would eviscerate the policy underlying section 1997e(e), because it would "allow prisoners to avoid the PLRA's physical injury requirement 'simply by adding a claim for punitive damages.'" *Brooks*, 800 F.3d at 1308 (quoting *Al–Amin*, 637 F.3d at 1197); *see Harris*, 216 F.3d at 977–78 (explaining that the "overriding goal" of the PLRA in general and section 1997e(e) in particular is not to weed out frivolous or meritless litigation, but "to reduce the number [of] [prisoner] cases *filed*, which is why Congress made confinement status at the time of *filing* the decisive factor") (emphases in original).

That conundrum evaporates when section 1997e(e) is read in light of section 3626: section 1997e(e) limits the recovery of compensatory monetary damages; section 3626(a) limits all forms of relief other than compensatory monetary damages; and, consistent with the PLRA's "overriding goal of reducing the number of prisoner cases filed," *Harris*, 216 F.3d at 978, neither provision allows a prisoner to obtain any kind of relief—prospective or retrospective—beyond what is needed to correct an actual and provable injury. Indeed, section 1997e(e) goes even further, barring a prisoner from recovering monetary relief that *is* needed to redress certain actual and provable injuries—i.e., "mental and emotional injur[ies]" for which there has not been a "prior showing of physical injury or the commission of a sexual act."

CONCLUSION

The district court's order dismissing Hoever's claim for punitive damages should be affirmed.

Respectfully submitted.

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I hereby certify that on January 4, 2021, I electronically filed the foregoing Brief with the Clerk of Court by using the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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