No. 21-11937

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

LYNN HAMLET,

Plaintiff-Appellant,

v.

OFFICER HOXIE, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Florida
Case No. 2:18-cv-14167-DMM

BRIEF OF APPELLANT LYNN HAMLET

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Lynn Hamlet v. Officer Hoxie, et al.

Case No. 21-11937

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The following Certificate of Interested Persons and Corporate Disclosure Statement, lists the parties and entities interested in this appeal, as required by 11th Cir. R. 26.1.

The undersigned hereby certifies the following list of trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that may have an interest in the outcome of this appeal:

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McAliley, Hon. Chris M., U.S. Magistrate Judge

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Shultheiss, Officer K., Defendant

Pursuant to Eleventh Circuit Rule 26.1-3, the undersigned further certifies that no publicly traded company or corporation has an interest in the outcome of this matter.

Date: November 15, 2021 Respectfully submitted,

/s/ Damilola G. Arowolaju

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-appellant Lynn Hamlet respectfully suggests that this Court would benefit from oral argument in this case for the following reasons: First, appellant, who was *pro se* below, obtained pro bono counsel on appeal; this Court may benefit from counsel's explication of the complex and lengthy district court record. Second, this case raises important questions regarding the constitutional minima guaranteed to incarcerated people, including whether correctional officials may place diabetic prisoners with open wounds "in contact and close proximity with excrement." *Brooks v. Warden*, 800 F.3d 1295, 1304 (11th Cir. 2015).

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STATEMENT OF JURISDICTION

Lynn Hamlet brought this action under 42 U.S.C. § 1983. ECF 26 at 1. The district court had jurisdiction under 28 U.S.C. §1331. On April 26, 2021, the district court entered a final judgment dismissing all claims. ECF 132. Mr. Hamlet timely filed a notice of appeal on May 26, 2021. ECF 144 at 1. This Court has jurisdiction under 28 U.S.C. §1291.

STATEMENT OF THE ISSUES PRESENTED

1. When Officer Hoxie locked Mr. Hamlet—an elderly, diabetic man with exposed wounds on his ankles—in a flooded shower filled with feces and urine, removed any items Mr. Hamlet could use to clean himself, and deprived Mr. Hamlet of the ability to wash the feces from his open wounds for two weeks—which resulted in a bacterial infection requiring a heart valve replacement to save his life—did he violate Mr. Hamlet's Eight Amendment rights?

2. After Mr. Hamlet challenged a fabricated disciplinary report and filed other grievances implicating Officer K. Shultheiss and her husband, did Officer K. Shultheiss retaliate against Mr. Hamlet by harassing him and filing another fabricated disciplinary report, which resulted in her husband sentencing Mr. Hamlet to solitary confinement?

3. Florida created a liberty interest in yard time, and, in any case, its deprivation constitutes an atypical and significant hardship when compared against ordinary prison life. Did Lt. A. Shultheiss's sentencing of Mr. Hamlet to solitary confinement for allegedly disrespecting his wife—which stripped him of all yard time—without (1) a written statement of the evidence relied on and reasons for the disciplinary action; (2) material witnesses; and (3) an impartial arbitrator contravene the Fourteenth Amendment?

INTRODUCTION

Officer Hoxie knowingly locked Mr. Hamlet—an elderly, diabetic man with open wounds on his ankles—inside a flooded shower teeming with another prisoner's feces and urine, and then deprived him of any means (other than toilet water) by which to cleanse himself. As a result, Mr. Hamlet developed a life-threatening infection that necessitated emergency heart-valve replacement surgery.

For decades, this Court and its sister circuits have ruled that placing incarcerated individuals "in contact and close proximity with excrement" violates the Eighth Amendment. *Brooks v. Warden*, 800 F.3d 1295, 1304 (11th Cir. 2015). Yet the district court awarded summary judgment to Officer Hoxie on two bases—exposure to excrement in a shower is insufficiently "extreme and unsanitary" to violate the Eighth Amendment; Officer Hoxie would not have appreciated the risk of harm from exposure to human waste. That is error and this Court should reverse.

Mr. Hamlet also sufficiently pled violations of his First Amendment and Fourteenth Amendment rights. Mr. Hamlet's deprivation of yard time was the byproduct of a retaliation campaign

commenced by Officer K. Shultheiss for filling grievances against her and her husband, Lt. A. Shultheiss. This campaign resulted in Lt. A. Shultheiss sentencing Mr. Hamlet to solitary confinement for allegedly disrespecting Officer K. Shultheiss—which deprived Mr. Hamlet of his liberty interest in yard time and good-time credits—without constitutionally adequate process. Those facts state quintessential claims under the First and Fourteenth Amendments, yet the district court dismissed them at the pleading stage. This Court should reverse.

STATEMENT OF THE CASE

I. Factual Background

Mr. Lynn Hamlet—an elderly, diabetic man with glaucoma and cataracts in the custody of the Florida Department of Corrections—is the victim of a retaliation campaign that nearly resulted in the loss of his life. This campaign commenced after Mr. Hamlet filed a grievance challenging Officer K. Shultheiss's fabricated disciplinary report ("D.R.")[1]. ECF 115 at 19; ECF 25 at 5. In the fabricated D.R., Officer K.

[1] Mr. Hamlet also filed grievances "against Officer [K.] Shultheiss for falsely accusing him of threatening her and against Officer [K.] Shultheiss and Lt. [A.] Shultheiss for refusing to let him eat after taking insulin." ECF 25 at 5.

Shultheiss alleged that Mr. Hamlet cornered her alone in an alley and raised his cane at her, screaming in rage. ECF 115 at 5.

A corrections officer claiming that an inmate assaulted them is a serious matter. Yet, the Department of Corrections dismissed her D.R. *Id.* "Ever[] since that D.R. and [his] reply, Officer [K.] Shultheiss has been [retaliating] and [harassing] []Plaintiff, Inmate Hamlet." *Id.* Mr. Hamlet has lived "in fear of this officer because of her hate for [him]." ECF 74-1 at 1. This hate manifested one day in the chow hall, leading to a series of events that forever changed Mr. Hamlet's life.

A. The Fabricated D.R. For Disrespecting An Officer

On April 17, 2018, Mr. Hamlet was just recovering from a diabetic induced seizure and was famished. ECF 115 at 13; ECF 119-4 at 15. As a diabetic, Mr. Hamlet's body requires a specific diet. ECF 112, Ex. 1 at 19; ECF 119-4 at 15. When he arrived at the chow hall, they were only serving peanut butter sandwiches, so Mr. Mitchell, the Food Service Director, told him to wait at a table until the chicken nuggets they were making were ready. ECF 115 at 13. Officer K. Shultheiss accosted Mr. Hamlet while he was waiting for his food, calling him a "bitch" in front of Mr. Mitchell and other individuals in the chow hall. *Id.* But that was not

enough. Officer K. Shultheiss decided to fabricate another disciplinary report against Mr. Hamlet, but this time she enlisted help. *See* ECF 26 at 2.

After calling Mr. Hamlet a "bitch," Officer K. Shultheiss flagged down Cpt. Bensing, telling her to lock him up—claiming, falsely, that Mr. Hamlet called Officer K. Shultheiss a "bitch." ECF 74 at 3. Although there were plenty of witnesses, including Mr. Mitchell, a sergeant, and other inmates, Cpt. Bensing requested only Officer K. Shultheiss's account. *Id.* "[W]ith a big smile on her face," Cpt. Bensing ordered Mr. Hamlet placed in confinement for disrespecting an officer. *Id.*

B. The Sham Disciplinary Hearing

Although he had not previously conducted a disciplinary hearing and has not conducted one since, Officer K. Shultheiss's husband, Lt. A. Shultheiss conducted Mr. Hamlet's disciplinary hearing. ECF 115 at 3; *see also* ECF 28 at 2. This hearing was unorthodox in several respects: (1) there was no "meaningful explanation[] of the finding of guilt;" (2) there was no "written statement by the fact finders[] as to the evidence relied on and the reason[] for the disciplinary action;" and (3) there was no impartiality as the sentencing officer was married to the individual

Mr. Hamlet was accused of committing an offense against. ECF 115 at 12. Even though Mr. Mitchell, the Food Service Director, was there when the alleged conduct occurred and could testify to who said what, Lt. A. Shultheiss never called him forward as a witness. *Id.* at 10. Instead, Lt. A. Shultheiss sentenced Mr. Hamlet to 30 days in solitary confinement for allegedly calling his wife a "bitch," without providing any indication of how he arrived at that conclusion, besides accepting his wife's account. *See id.* at 9-10. And his punishment stripped Mr. Hamlet of all yard time and 30 days of good-time credits (known as "gain time" in the FDOC). ECF 119-2 at 4; ECF 112, Ex. 1 at 26.

C. Mr. Hamlet's Time In Solitary Confinement

Officer Hoxie, and the officers he oversaw, found ways to inflict additional punishment on inmates. For example, "[a]nything [an incarcerated person does that] they don't like, . . . they take all of [thei]r property and go put it somewhere and put [them] in the shower with [thei]r underwear on and leave [them] there to inconvenience [them]." ECF 112, Ex. 1 at 33. The officers applied this tactic on a man they confined in a handicap shower for about twelve hours straight. *Id.* at 34. Given no bathroom break, the man relieved himself in the shower. ECF

130 (Order) at 2; ECF 112-1 at 14. The officers removed him just before it was time for Mr. Hamlet to shower in that same shower. ECF 112-1 at 33. But "Officer Hoxie, whose job it was to supervise the unit, never checked to see if the shower was clean before Mr. Hamlet entered." ECF 130 (Order) at 2.

On April 25, 2018, Officer Hoxie escorted Mr. Hamlet, in nothing but his underwear, to the handicap, one-man shower, and locked the door. ECF 112-1 at 14, 29.[2] As a diabetic, Mr. Hamlet has open wounds on his ankles, which are visibly red. *Id.* at 39-40. Officer Hoxie knew that Mr. Hamlet has diabetes—not only did he supervise the unit, but he also provided Mr. Hamlet's diabetic meals, which he threw on the ground on occasion. See ECF 112, Ex. 1 at 19. Considering that Mr. Hamlet was wearing only his underwear and the wounds were bright red, Officer Hoxie could not have missed Mr. Hamlet's pre-existing injury.[3] When Mr.

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[2] Defendants, based on nothing but a roster sheet, contend Officer Hoxie was not present. ECF 112 at 5. Mr. Hamlet's evidence is to the contrary and thus that dispute of material fact must be left for the trier of fact, as the district court recognized. ECF 130 (Order) at 11 n.2; *see also Sears v. Roberts*, 922 F.3d 1199, 1208 (11th Cir. 2019) (finding records do not "blatantly contradict[]" facts the way a video can).

[3] At this stage, the "the evidence and all factual inferences reasonably drawn from the evidence" are viewed "in the light most favorable to [Mr. Hamlet,] the nonmoving party" and "all reasonable doubts about the

Hamlet entered the small shower, he sat on the wall and began washing his hair and face. ECF 112, Ex. 1 at 14. But as he bent over to wash the soap from his hair, he noticed that urine and feces, which had been deposited by a previous occupant in a potato chip bag, were floating in water that had pooled to his ankles. *Id.* at 14, 30, 36; ECF 130 (Order) at 2. "The feces, the urine, the bag was right there and bumping against [his] legs." ECF 112, Ex. 1 at 35. He was in the shower only for a few minutes at this point. *Id.*

Understanding these unsanitary conditions presented a dire problem—being a diabetic with open wounds—Mr. Hamlet immediately called out to be let out of the shower, citing the urine and feces. *Id.* at 14; *see* ECF 112, Ex. 1 at 14. The doors of the shower were "regular jail bars," so Officer Hoxie could "see through the bars." *Id.* at 37. When Officer Hoxie arrived at the shower, he looked at Mr. Hamlet, the urine, and feces and hollered "You did it. . . . You did it," alluding to the feces and urine. *See id.* at 14. Mr. Hamlet pleaded with him, exclaiming "Let me out, man. I didn't do nothing. Let me out of the shower, because they got

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facts" are resolved in his favor. *Rioux v. City of Atlanta*, 520 F.3d 1269, 1274 (11th Cir. 2008).

feces and urine in it." *Id.* Officer Hoxie "initially opened the door to let Mr. Hamlet out, but then 'change[d] his mind and [pushed] [him] back in the shower.'" ECF 130 (Order) at 1. (alterations in original).

As Officer Hoxie trapped Mr. Hamlet in the shower, he remained "unable to avoid getting feces and urine on his ankles." ECF 130 (Order) at 2. And he was "unable to rinse the human waste of his ankles" because the shower was cramped and flooded. *Id.* While this continued for about thirty minutes—Mr. Hamlet watched through the bars of the shower door as Officer Hoxie "went to [his] cell, which was right across from the shower, and threw all [his] clean clothes, threw them all out in the hallway. And he still wouldn't let [him] out." ECF 112, Ex. 1 at 14-15. In his deposition, Mr. Hamlet described his situation: "So I had to stay in there in the shower, the feces that covered all my open wounds now. And I couldn't do nothing." [sic] *Id.* at 15. He was helpless. Officer Hoxie left Mr. Hamlet in that urine and feces infested shower for nearly an hour. ECF 112, Ex. 1 at 14.

When Officer Hoxie finally released Mr. Hamlet from the shower and escorted him to his cell, he discovered that Officer Hoxie had "left [him] with nothing to clean the feces and urine off [him]self." ECF 130

(Order) at 3. (alterations in original). With feces encrusted on his open wounds, "Mr. Hamlet attempted to use the water in his cell's toilet and *his bare hands* to get the human waste off his ankles, but he was unsuccessful." *Id.* (emphasis added). Mr. Hamlet described his feeble attempt: "I wasn't successful. I couldn't get it out. It was stuck there. And so I couldn't do *nothing*." ECF 112, Ex. 1 at 15. (emphasis added). So, he stayed up as long as he could, laid down, and woke up the next morning "bad-off sick." *Id.*

D. The Bacterial Infection

"Officer Hoxie told the officers not to let [Mr. Hamlet] take a shower that week." ECF 112, Ex. 1 at 16, 48-49. Thus, the feces seeped into his open wounds, causing an infection. *See id.* at 16. Mr. Hamlet became increasingly sicker until "[he] didn't know where he was," as one day bled into another. *Id.* at 15. He did not move or talk; he "was just in a trance;" and the "[o]nly thing [he] did was lay in that bed and suffer." *Id.* at 49, 50. He could not even eat, which further impacted his glucose levels, *see* ECF 119-4 at 19; ECF 112, Ex. 1 at 49, while he recovered from the

diabetic seizure he had experienced a week prior. *See* ECF 115 at 13.[4] Thirteen days later, Mr. Hamlet's roommate alerted the medical unit after noticing that Mr. Hamlet was still terribly ill and that he had feces on his body. ECF 112, at 15.

On the morning of May 8, 2018, nurses brought him into the clinic in a stretcher after wheeling him from his cell. ECF 119-4 at 22. He lost control of his bladder and bowls—having urinated and defecated on himself; his entire body was weak—leaving him dehydrated, in an "altered mental state," and with "intractable hiccups." *Id.* It was there, *two weeks* after Defendants exposed him to feces and urine, where he *finally* showered. *See* ECF 112, Ex. 1 at 16; ECF 119-4 at 239. But it was too late, he had already developed a bacterial infection in his urinary tract and liver, which ravaged his body, particularly his heart. ECF 112, Ex. 1 at 18; ECF 130 (Order) at 3. Defendants then rushed him to Larkin Hospital in Miami, where he remained for two months. ECF 112, Ex. 1 at 17; ECF 10, at 10. While at the hospital, Mr. Hamlet lost use of his legs: he could not walk, stand, or use the bathroom on his own. ECF 112,

[4] Four days after the exposure, Mr. Hamlet went to the infirmary, because of his dangerous glucose levels, stemming from his inability to eat. *See* ECF 119-4 at 19.

Ex. 1 at 17. He "became so ill that he begged and prayed to die." ECF 10 at 10.

With his treatment nearly finished, Mr. Hamlet was released back to Martin Correctional Institution's infirmary. ECF 112, Ex. 1 at 17-18. But he soon returned to the hospital, after the doctor in the infirmary realized something was wrong with his heart. *Id.* at 18. "The bacterial infection 'completely destroyed' Mr. Hamlet's heart valves, necessitating heart valve surgery to save his life." ECF 130 (Order) at 3. After the surgery, Mr. Hamlet spent months recovering. ECF 112, Ex. 1 at 18-19.

Three years from the incident, Mr. Hamlet is still suffering and cannot walk without help. ECF 115 at 23, 24.

II. The Proceedings Below

Mr. Hamlet submitted his complaint on April 18, 2018[5] under 42 U.S.C. §1983 against Officer K. Shultheiss, Captain Bensing, Food Service Director Mitchell, Unnamed Officers, and Martin Correctional Institution. ECF 1 at 2-3. Mr. Hamlet's principal claim was for First Amendment retaliation by the officers, because he filed grievances

[5] The court did not process and file the complaint until May 4, 2018, but Mr. Hamlet filed this initial complaint before the April 25, 2018, shower incident.

against both Officer K. Shultheiss and her husband, Lt. A. Shultheiss. *Id.* at 6. Mr. Hamlet moved for appointment of counsel on several occasions, citing first his glaucoma and cataracts in his eyes and his inability to afford counsel, *see, e.g.*, ECF 38 at 1; and then his complications from the bacterial infection and heart valve surgery—along with limited access to the law library and lack of legal knowledge, *see, e.g.*, ECF 19, 2-3. But the district court denied his motions, so Mr. Hamlet proceeded *pro se*.

On July 26, 2019, the magistrate judge ordered Mr. Hamlet to file an amended complaint. *See generally* ECF 25. Mr. Hamlet filed his amendment complaint, which included the claims that arose since the filing of the first complaint, particularly alleging Eighth Amendment deliberative indifference against Officer Hoxie for locking him in a shower containing urine and feces, which led to a near-fatal bacterial infection that resulted in heart surgery during the litigation. ECF 26 at 6, 7. And it also clarified that Mr. Hamlet was prosecuting a Fourteenth Amendment due process violation for his punishment of solitary confinement, which deprived him of yard time and good-time credits,

ECF 112, Ex. 1 at 26; ECF 119-2 at 4, without adequate process, ECF 26 at 3, 5.

The magistrate judge found the following: (1) Mr. Hamlet's First Amendment claim was deficient because it did not find that he "clearly alleged" that Officer K. Shultheiss punished him for complaining through the grievance system. ECF 28 at 5; (2) Mr. Hamlet's Fourteenth Amendment due process claim was similarly deficient because the judge decided he did not allege that Lt. A. Shultheiss deprived him of "minimum due process protections" at his disciplinary hearing, *id*. at 6; but (3) Mr. Hamlet stated a claim for an Eighth Amendment violation when "Officer Hoxie 'confined plaintiff . . . in conditions lacking basic sanitation," *id*. at 8.

The district court then adopted the magistrate judge's report and recommendation, dismissing all claims against defendants except the Eighth Amendment claim against Officer Hoxie. ECF 28 at 9; *see generally* ECF 29.

Subsequently, the district court granted Officer Hoxie's motion for summary judgment, finding no Eighth Amendment violation. ECF 130 (Order) at 8. First, it concluded that exposing Mr. Hamlet and his open

wounds to urine and feces, while depriving him of any means to "clean the feces and urine off himself," *id.* at 3, was not sufficiently "extreme and unsanitary" to violate the objective prong of the Eighth Amendment, *id.* at 12. And then it concluded that, despite Officer Hoxie "push[ing] [Mr. Hamlet] back in the shower," *id.* at 2, after Mr. Hamlet told him the cramped, flooded shower was filled with human feces and urine, "no reasonable juror could infer that Officer Hoxie was aware of a risk of harm to Mr. Hamlet and disregarded that risk," *id.* at 14.

SUMMARY OF THE ARGUMENT

I. By placing Mr. Hamlet in close proximity to human waste, Officer Hoxie violated the Eight Amendment's prohibition on cruel and unusual conditions of confinement. *Brooks v. Warden*, 800 F.3d 1295, 1305 (11th Cir. 2015). Officer Hoxie locked Mr. Hamlet (an elderly, diabetic man with open wounds on his ankles) in a flooded shower Mr. Hamlet informed him was filled with urine and feces, ECF 112 Ex. 1 at 14, 16, while Officer Hoxie proceeded to raid Mr. Hamlet's cell—"le[aving] [him] with nothing to clean the feces and urine off [him]self" but his bare hands. ECF 130 (Order) at 3. (alterations in original). Officer Hoxie then forbade

prison officials from allowing Mr. Hamlet to shower. ECF 112, Ex. 1 at 16, 49.

Officer Hoxie was aware of the dangers of his conduct "as the health risks of prolonged exposure to human excrement are obvious." *See Brooks*, 800 F.3d at 1305; *see also Fruit v. Norris,* 905 F.2d 1147, 1150-51 (8th Cir. 1990) (It is "common sense" that "unprotected contact with human waste could cause disease."). If not for Officer Hoxie's conduct, Mr. Hamlet would not have developed a viral infection that destroyed his heart valve, requiring surgery to save his life. The district court erred in granting summary judgment.

II. Mr. Hamlet alleged a plausible First Amendment retaliation claim, pleading that after he challenged Officer K. Shultheiss's fabricated disciplinary report and filed other grievances against her and her husband, she launched a retaliation campaign against Mr. Hamlet with the assistance of her husband and other prison officials. As punishment, Officer K. Shultheiss's husband sentenced Mr. Hamlet to solitary confinement, purportedly for disrespecting his wife. Punishing protected speech in a manner that would deter a reasonable person from engaging in further protected speech amounts to a quintessential violation of the

First Amendment. The district court erred in granting Defendants' motion to dismiss.

III. Mr. Hamlet alleged a plausible Fourteenth Amendment claim. Prison officials cannot deprive incarcerated individuals of a liberty interest without due process, *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974), yet Defendants did just that. Mr. Hamlet had a liberty interest in yard time because Florida law creates one, Fla. Admin. Code Ann. 33-6-1.800(10)(m), and the deprivation is otherwise an "atypical and significant" hardship when compared to the ordinary conditions of prison life, *Bass v. Perrin*, 170 F.3d 1312, 1318 (11th Cir. 1999). Mr. Hamlet also retained a liberty interest in good-time credits or "gain time," which his punishment stripped him of, totaling 30 days. ECF 119-2 at 4; *see Wolff*, 418 U.S. at 557. Required by law to observe constitutional minima that must accompany liberty deprivations, Lt. A. Shultheiss instead conducted a sham hearing unaccompanied by a written statement of the evidence relied on and reasons for the disciplinary action; without material witnesses; and without an impartial arbitrator. *See Wolff*, 418 U.S. at 563-72, 592. The district court erred in granting Defendants' motion to dismiss.

STANDARD OF REVIEW

This Court "construe[s] *pro se* pleadings liberally." *Dixon v. Hodges*, 887 F.3d 1235, 1237 (11th Cir. 2018). "[A]ccepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff," it then reviews a motion to dismiss for failure to state a claim *de novo*. *Timson v. Sampson*, 518 F.3d 870, 872 (11th Cir. 2008). The *de novo* standard likewise applies for reviewing a district court's grant of summary judgment. *Harris v. Ostrout*, 65 F.3d 912, 915 (11th Cir. 1995). "[T]he facts, as accepted at the summary judgment stage of the proceedings, may not be the actual facts of the case. Nevertheless, for summary judgment purposes, [the Court's] analysis must begin with a description of the facts in the light most favorable to the plaintiff." *Lee v. Ferraro*, 284 F.3d 1188, 1190 (11th Cir. 2002) (citations and quotation marks omitted).

ARGUMENT

I. OFFICER HOXIE VIOLATED THE EIGHTH AMENDMENT AND IS NOT ENTITLED TO QUALIFIED IMMUNITY.

Officer Hoxie violated the Eighth Amendment. "A prison official violates the Eighth Amendment when a substantial risk of serious harm, *of which the official is subjectively aware*, exists and the official does not

respond reasonably to the risk." *Caldwell v. Warden, FCI Talladega,* 748 F.3d 1090, 1099 (11th Cir. 2014) (quoting *Carter v. Galloway,* 352 F.3d 1346, 1349 (11th Cir.2003)) (internal quotation marks omitted). Officer Hoxie knowingly exposed Mr. Hamlet to another prisoner's feces and urine, an obviously dangerous course of conduct (one, in fact, which caused a life-threatening infection necessitating cardiac surgery). This Court—and every other circuit court—has rightly held that such behavior is unlawful. *Infra* § IA.

Officer Hoxie is not entitled to the shield of qualified immunity. Prison officials in this circuit were on notice as early as 1971, that "the deprivation of basic elements of hygiene" is unlawful. *Novak v. Beto*, 453 F.2d 661, 665 (5th Cir. 1971).[6] And since 2012, prison officials have been on notice of prisoners right to be free from "prolonged exposure to human excrement," *Brooks v. Warden*, 800 F.3d 1295, 1305 (11th Cir. 2015). Regardless, no case was necessary to place officials on notice because defendant's actions were an obvious constitutional violation, *see Taylor*

[6] In *Bonner v. City of Prichard,* 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

v. Riojas, 141 S. Ct. 52, 53 (2020). *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). *Infra* § IB.

A. Officer Hoxie Violated The Eighth Amendment By Locking Mr. Hamlet, An Elderly Diabetic, In A Flooded Shower Filled With Human Excrement And Thereafter Depriving Mr. Hamlet Of The Means To Cleanse Himself.

1. Officer Hoxie Exposed Mr. Hamlet To Human Excrement, Conduct That Obviously Placed Mr. Hamlet At Substantial Risk Of Serious Harm.

This Court assesses the first element of an Eighth Amendment conditions of confinement claim under an objective standard. *Lane v. Philbin*, 835 F.3d 1302, 1307 (11th Cir. 2016). "Although '[t]he Constitution does not mandate comfortable prisons,' . . . it does not allow [an incarcerated person] to be exposed to an objectively 'unreasonable risk of serious damage to [their] future health.'" *Brooks*, 800 F.3d at 1303 (quoting *Helling v. McKinney*, 509 U.S. 25, 35 (1993)).

Prison officials violate the objective prong of the Eighth Amendment through "the deprivation of basic elements of hygiene." *Novak*, 453 F.2d at 665. And "[e]xposure to human waste, like few other conditions of confinement, evokes both the health concerns emphasized in *Farmer* and the more general standards of dignity embodied in the Eighth Amendment." *DeSpain v. Uphoff,* 264 F.3d 965,

974 (10th Cir. 2001); *see also Brooks*, 800 F.3d at 1303 (similar). For that reason, every sister circuit (except the Federal Circuit) has recognized that the deprivation of basic sanitary conditions can constitute an Eighth Amendment violation." *Brooks*, 800 F.3d at 1304.[7]

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[7] *See*, *e.g.*, *Budd v. Motley*, 711 F.3d 840, 843 (7th Cir. 2013) ("unhygienic conditions, when combined with the [prison]'s failure to provide [inmates] with a way to clean for themselves with running water or other supplies" state an Eighth Amendment claim); *Young v. Quinlan,* 960 F.2d 351, 365 (3d Cir. 1992) ("It would be an abomination of the Constitution to force a prisoner to live in his own excrement for four days."); *Howard v. Adkison,* 887 F.2d 134, 137 (8th Cir. 1989) (noting that "inmates are entitled to reasonably adequate sanitation" and finding Eighth Amendment violation where cell was "covered with . . . human waste"); *Inmates of Occoquan v. Barry,* 844 F.2d 828, 836 (D.C. Cir. 1988) (recognizing "sanitation" as a "basic need" for prisoners protected by the Eighth Amendment); *Parrish v. Johnson,* 800 F.2d 600, 609 (6th Cir. 1986) ("[T]he Eighth Amendment protects prisoners from being . . . denied the basic elements of hygiene.") (quotation omitted); *Green v. McKaskle,* 788 F.2d 1116, 1126 (5th Cir. 1986) ("[A] state must furnish its prisoners with reasonably adequate . . . sanitation . . . to satisfy [the Eighth Amendment's] requirements.") (quotation and alteration omitted); *Hoptowit v. Spellman,* 753 F.2d 779, 784 (9th Cir. 1985) (noting that the failure to provide "minimally sanitary" conditions "amounts to a violation of the Eighth Amendment"); *Hawkins v. Hall,* 644 F.2d 914, 918 (1st Cir. 1981) (explaining that prison conditions "must be sanitary") (quotation omitted); *Hite v. Leeke,* 564 F.2d 670, 672 (4th Cir. 1977) (recognizing that "the denial of decent and basically sanitary living conditions and the deprivation of basic elements of hygiene" can violate the Eighth Amendment) (quotation omitted); *LaReau v. MacDougall,* 473 F.2d 974, 978 (2d Cir. 1972) ("Causing a man to live, eat and perhaps sleep in close confines with his own human waste is too debasing and degrading to be permitted.").

Because placing an incarcerated individual in "contact and close proximity with excrement" creates a substantial risk of serious harm, *Brooks*, 800 F.3d at 1303, "courts have been especially cautious about condoning conditions that include an inmate's proximity to human waste." *Fruit,* 905 F.2d at 1151. For decades, therefore, this Court (and the 5th Circuit that predated it) has ruled that unsanitary conditions give rise to an Eighth Amendment Violation by "cit[ing] with approval cases in which prisoners had successfully stated Eighth Amendment *claims based on being placed in contact and close proximity with excrement*—just as [Mr. Hamlet] alleges he was." *Brooks*, 800 F.3d at 1303. (emphasis added).

For example, in *Brooks*, this Court held defendants were deliberately indifferent when they "forced [the plaintiff] to lie in direct and extended contact with his own feces without any ability to clean himself" for two days. *Id.* at 1305. In *Bilal v. Geo Care, LLC*, this Court found an "Eighth Amendment conditions-of-confinement" violation where the defendants denied the plaintiff access to a bathroom, forcing the plaintiff to sit in his feces for a couple of hours. *See* 981 F.3d 903, 915 (11th Cir. 2020). In *Chandler v. Baird*, the plaintiff complained of a cold

cell and deprivation of toilet paper for three days, running water for two days, and deprivation of other toiletries. 926 F.2d 1057, 1064 (11th Cir. 1991). This Court ruled the plaintiff was "entitled to have the trier of fact determine whether the conditions of his administrative confinement . . . violated the minimal standards required by the Eighth Amendment." *Id.* at 1065. And finally, in *Taylor*, the Supreme Court reversed a grant of summary judgment, where prison officials confined a prisoner for four days to a cell encrusted with feces. 141 S. Ct. at 53.

"In some ways, [Mr. Hamlet's] allegations are worse than those found in the governing caselaw." *Brooks*, 800 F.3d at 1305. *Baird* sets the floor. A cold cell and not having toiletries is closer to "[un]comfortable prison[]" conditions, *Farmer v. Brennan*, 511 U.S. 825, 832 (1994), than the unsanitary conditions of confinement that Officer Hoxie exposed Mr. Hamlet to in the shower. What's more, Officer Hoxie's unlawful conduct continued long after he recognized the unsanitary conditions. When Mr. Hamlet alerted Officer Hoxie to urine and feces in the shower—he "pushed him back in the shower."[8] ECF 130 (Order) at 2. Officer Hoxie

[8] Officer Hoxie's conduct may be illustrative of a practice of using showers to inflict punishment. S*ee, e.g.*, Julie K. Brown, *Florida Oks $4.5 Million Payout for Brutal Prison Shower Death of Darren Rainey*, WLRN, Jan.

then "went into [Mr. Hamlet's] cell and took all the clean clothes and left [Mr. Hamlet] with nothing to clean the feces and urine off himself." *Id.* at 3. He even took his towel—forcing Mr. Hamlet "to use the water in his cell's toilet and *bare hands* to get the human waste of his ankles, but he was unsuccessful." *Id.* (emphasis added). Then, Officer Hoxie prevented Mr. Hamlet from showering for *two weeks*—as he "told all the officers that was working the shower that [Mr. Hamlet] was not allowed to take a shower" for the next seven days. ECF 112, Ex. 1 at 47. This left Mr. Hamlet unable to shower until May 8, 2018, when nurses rushed him to the infirmary. That conduct violates the Eighth Amendment, too. *See Bradley v. Puckett*, 157 F.3d 1022, 1024-26 (5th Cir. 1998) (prison officials

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28, 2018, https://www.wlrn.org/news/2018-01-28/florida-oks-4-5-million-payout-for-brutal-prison-shower-death-of-darren-rainey; Eyall Press, *Madness: In Florida prisons, mentally ill inmates have been tortured, driven to suicide, and killed by guards*, NEW YORKER, Apr. 21, 2016, https://www.newyorker.com/magazine/2016/05/02/the-torturing-of-mentally-ill-prisoners ("Rainey was not the first person who had been locked in that shower; he was only the first to die there."); ECF 112, Ex. 1 at 33 ("Anything you do and . . . they don't like, . . . they take all of your property and go put it somewhere and put you in the shower with your underwear on and leave you there to inconvenience you.").

deliberately indifferent to conditions of confinement where prisoner forced to clean himself with toilet water, leading to infection).

Mr. Hamlet's conditions of confinement were also more extreme than the conditions at issue in *Bilal* and *Brooks*, where plaintiffs were in contact with their *own* feces for only a couple hours and two days, respectively. Mr. Hamlet, by contrast, had another human's feces stuck to his open wounds for *two weeks*. Moreover, being objectively more unhygienic than *Brooks*, Mr. Hamlet's conditions of confinement undoubtedly violate the objective prong of the Eighth Amendment, since *Brooks* was "on the extreme nature of allegations as compared to other situations courts encountered." *Bilal*, 981 F.3d at 915.

That Mr. Hamlet suffers from diabetes and had open wounds made Officer Hoxie's conduct particularly egregious. "Diabetes confers an increased risk of developing and dying from an infectious disease." Baiju R. Shah & Janet E. Hux, *Quantifying the Risk of Infectious Diseases for People With Diabetes*, 26 Diabetes Care 510 n. 2 (Feb. 2003); *see, e.g.*, *Milton v. Turner*, 445 F. App'x 159, 163 (11th Cir. 2011) ("Here, one could reasonably infer that an infected [big toe], if left untreated, would pose a substantial risk of harm, especially in a diabetic."); *cf. Wilson v. Williams*

961 F.3d 829, 833 (6th Cir. 2020) ("COVID-19 fatality rates increase with age and underlying health conditions such as cardiovascular disease, respiratory disease, *diabetes*, and immune compromise.") (emphasis added). In fact, individuals with diabetes in the free world are between four and fifteen times more likely to be hospitalized from an infection than those without diabetes. Jessica L. Harding et al., *Trends in Rates of Infections Requiring Hospitalization Among Adults With Versus Without Diabetes in the U.S., 2000-2015*, 43 DIABETES CARE 108 (Jan. 2020), https://doi.org/10.2337/dc19-0653. For example, researchers found "an alarming increase in hospitalization rates for *skin and soft-tissue infection* (cellulitis, osteomyelitis, and foot infections) in adults with diabetes." *Id.* (emphasis added). Additionally, individuals with diabetes are more susceptible to bloodstream infections, particularly urinary tract infections like that which Mr. Hamlet developed. Anna W.M. Janssen et al., *Understanding the increased risk of infections in diabetes: innate and adaptive immune responses in type 1 diabetes*, METABOLISM CLINICAL AND EXPERIMENTAL, 1 (Jan. 14, 2021).

Reviewing Officer Hoxie's conduct, the district court flipped the summary judgment standard on its head and made factual inferences

against Mr. Hamlet: first, the district court suggested that Mr. Hamlet intentionally sought to expose himself to the feces. Second, it implied that Mr. Hamlet still had a towel, even though he alleged otherwise. Third, Mr. Hamlet had no obligation to allege how many ounces of urine flowed through the flooded shower (if such an assessment is even possible); this Court has never held that exposure to human feces hinges on the amount of feces the plaintiff is exposed to, only that "being placed in contact and close proximity with excrement—just as [Mr. Hamlet] alleges he was," *Brooks*, 800 F.3d at 1303—itself gives rise to an Eighth Amendment violation. At minimum, the quantity of excrement is a disputed question of fact, and Mr. Hamlet is therefore "entitled to have the trier of fact determine whether the conditions . . . violated the minimal standards required by the Eighth Amendment." *Baird*, 926 F.2d at 1066.

The district court also incorrectly cabined how long Defendants exposed Mr. Hamlet to feces to the time he was locked in the shower on April 25, 2018. *See* ECF 130 (Order) at 11. Mr. Hamlet testified that "he was unsuccessful" in removing the feces from his open wounds, even after trying with his *bare* hands. ECF 130 (Order) at 3. Since Officer Hoxie

refused to let him shower "for the next seven days," ECF 112, Ex. 1 at 47—the exposure continued until prison officials allowed Mr. Hamlet to shower in the infirmary on May 8, 2018. *See* ECF 112, Ex. 1 at 16; ECF 119-4, at 22; *see also Miller v. King*, 384 F.3d 1248, 1263 (11th Cir. 2004) (objective prong of the Eighth Amendment violated where plaintiff was not allowed to shower and remove urine and feces from his body for extended periods).

But even Officer Hoxie confining Mr. Hamlet to the shower for nearly an hour was long enough to violate the objective prong of the Eighth Amendment. To start, any length of time an individual and their open wounds are forced into contact with urine and feces is too long under the Eighth Amendment. *Cf. Wiggin v. Schneider*, No. C13–5884 RJB–KLS, 2014 WL 793460, at *3 (W.D. Wash. Feb. 10, 2014) (finding exposing plaintiff's open wounds to another inmate's blood posed unreasonable risk of serious damage to health). And "[w]hile the length of time a prisoner must endure an unsanitary cell is undoubtedly one factor in the constitutional calculus, the degree of filth endured is surely another" and thus "the length of time required before a constitutional violation is made out decreases as the level of filthiness endured

increases." *Whitnack v. Douglas Cnty.*, 16 F.3d 954, 958 (8th Cir. 1994); *see also DeSpain*, 264 F.3d at 974. This is true particularly where the record shows the conditions were "of any proven adverse consequence to the health or other basic human needs of the plaintiffs, given the brevity of their confinement." *Whitnack*, 16 F.3d at 958.

The filth Officer Hoxie exposed Mr. Hamlet to is antithetical to human dignity. No matter how much Mr. Hamlet tried, he could not avoid the urine and the feces as it continued "bumping up against [his] legs" and his open wounds for nearly an hour. ECF 130 (Order) at 2. He went to the shower to clean himself but emerged with human waste "covering all of [his] open wounds." ECF 130 (Order) at 2.[9] The waste was not his own, *contra Brooks*, 800 F.3d at 1303, nor was it merely on the

[9] Even if Officer Hoxie claims he was not aware of Mr. Hamlet's open wounds, it is a dispute of material fact. Officer Hoxie knew Mr. Hamlet was diabetic, *see* ECF 112, Ex. 1, at 19, and he reasonably saw Mr. Hamlet's bright red open wounds as he marched him to the shower, *see id*. at 40. Moreover, "all factual inferences reasonably drawn from the evidence" are viewed "in the light most favorable to [Mr. Hamlet,] the nonmoving party" and "all reasonable doubts about the facts" are resolved in his favor. *Rioux*, 520 F.3d at 1274. At a minimum, these disputes of material fact must foreclose summary judgment. *See, e.g.*, *Johnson v. Ratelle*, 105 F.3d 665 (9th Cir. 1996) ("Here, there remain genuine issues of material fact as to whether Simms exhibited deliberate indifference to the potential future health risks of exposing Johnson to sewage given his healing surgical wound.").

surfaces of a cell, *contra Saunders v. Sheriff of Brevard Cnty.*, 735 F. App'x 559, 562 (11th Cir. 2018)—the waste was on his body. Accordingly, the conditions Officer Hoxie imposed upon Mr. Hamlet were more unsanitary than the *Brooks* and *Saunders* plaintiffs. At minimum, if the Court found the conditions in *Brooks* violated the objective prong of the Eighth Amendment, so too should this Court. 800 F.3d at 1304.

This also is not a case where an incarcerated individual was just exposed to human waste with no "proven adverse consequences to [their] health." *Whitnack*, 16 F.3d at 958; *see, e.g.*, *Brooks*, 800 F.3d at 1298 ("Brooks has not alleged any physical injury."). Rather, this is a case where the prolonged exposure to human waste resulted in a "bacterial infection that 'completely destroyed' Mr. Hamlet's heart valves, necessitating heart valve surgery to save his life," ECF 130 (Order) at 3. This is also a case where the exposure to human waste and the resulting surgery from the infection left Mr. Hamlet "unable to walk, stand or use the restroom on his own." *Id.*

Finally, the district court's analysis of this Court's unpublished opinion in *Saunders* misses the mark. *See* ECF 130 (Order) at 13.[10] The plaintiff in *Saunders* admitted he was never personally exposed to the alleged unsanitary conditions. *Saunders*, 735 F. App'x at 562. Nevertheless, the Court ruled against the plaintiff not because of the conditions as the district court suggests, but because the court found Saunders could not satisfy the subjective prong of the Eighth Amendment analysis. *Id*. at 560 ("Saunders fails to present evidence that Commander Jeter knew or inferred that the [facility] was unconstitutionally unsanitary during the time that Saunders was detained there."). But here, Mr. Hamlet satisfies the subjective prong of the Eight Amendment inquiry. *See infra* § IA2.

Does locking an incarcerated individual with open wounds on their ankles in a shower flooded at ankle height, containing human feces and urine comport with "contemporary standards of decency?" *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). The question answers itself. It is a "risk of which . . . today's society [cannot] choose[] to tolerate." *Helling*, 509

[10] And its discussion of *Alfred* is irrelevant as this case is about deprivation of hygiene by exposure to human feces and urine, not sleeping conditions or plumbing problems.

U.S. at 36. And it violates the objective prong of the Eighth Amendment. The district court erred in ruling otherwise.

2. Officer Hoxie Knowingly Exposed Mr. Hamlet To Human Excrement But Disregarded The Danger Posed By His Conduct.

This Court assesses the second prong of an Eighth Amendment claim under a subjective standard requiring: (1) subjective knowledge of a risk of harm; (2) disregard of that risk; (3) conduct by prison officials that is more than negligence. *Philbin*, 835 F.3d, at 1308. The "standard of purposeful or knowing conduct is not, however, necessary to satisfy the *mens rea* requirement of deliberate indifference for claims challenging conditions of confinement." *Farmer*, 511 U.S. at 836. Whether a defendant possess "subjective knowledge of the risk of serious harm is a question of fact," a factfinder may conclude that a prison official knew of the risk "from the very fact the risk was obvious." *Goebert v. Lee Cnty.*, 510 F.3d 1312, 1327 (11th Cir. 2007) (quoting *Farmer*, 511 U.S. at 842). Likewise, circumstantial evidence "can be used to show that a prison official possessed the necessary knowledge." *Philbin*, 835 F.3d, at 1308. The district court erred in finding that Defendant Hoxie was not

subjectively aware of that risk, particularly the presence of feces and urine. ECF 130 (Order) at 13.

Here, Defendant Hoxie possessed knowledge of the risk of harm. First, upon noticing the urine and feces, "Mr. Hamlet called out to the officers to be let out of the shower [and] Officer Hoxie responded by accusing Mr. Hamlet of *defecating in the shower*, saying 'you did it." ECF 130 (Order) at 2 (emphasis added). Defendant Hoxie disregarded the risk and engaged in unreasonable conduct—exceeding negligence—when in response, he "initially opened the door to let Mr. Hamlet out, but then 'change[d] his mind and [pushed][him] back in the shower." *Id*. Despite the facts in the record, the district court found that "no reasonable juror could infer that Officer Hoxie was aware of a risk of harm to Mr. Hamlet and deliberately disregarded that risk." *Id.* at 14. This is clear error. That Officer Hoxie was not aware of the conditions before Mr. Hamlet entered the shower is immaterial, because Mr. Hamlet immediately made him aware of the conditions. *But see id.* at 13. The district court ignores that the feces exposure continued *after* Officer Hoxie locked him in the shower and informed him of the risk.

Second, Officer Hoxie retained the opportunity to do the reasonable thing: eliminate the risk of harm by letting Mr. Hamlet out of the shower. He chose not to, disregarding Mr. Hamlet's pleas for help. Instead, Officer Hoxie acted not with negligence but with deliberate indifference—pushing Mr. Hamlet back into the feces-and-urine-ridden, flooded shower; back into the risk of substantial harm. ECF 130 (Order) at 2.

Finally, Officer Hoxie's disregard continued when, "[w]hile Mr. Hamlet was locked in the shower, Officer Hoxie 'went into [his] cell and took all the clean clothes and left [him] with nothing to clean the feces and urine off [him]self." ECF 130 (Order) at 3. And it continued as "Officer Hoxie told the officers not to let [Mr. Hamlet] take a shower that week." ECF 112, Ex. 1 at 16, 49. Mr. Hamlet alleges that he was unable to shower until the nurses rushed him to the infirmary *two weeks* later on May 8, 2018.

The district court erred—despite Officer Hoxie being aware of the feces and removing any means for Mr. Hamlet to clean himself for weeks—in deciding that Mr. Hamlet could not prevail on the subjective prong because "Mr. Hamlet still cannot demonstrate that Officer Hoxie was aware of Mr. Hamlet's risk of infection." ECF 130 (Order) at 14. But

it is "common sense" that "unprotected contact with human waste could cause disease." *Fruit,* 905 F.2d at 1150–51; *see also DeSpain*, 264 F.3d at 975 (noting "exposure to human waste carries particular weight in the conditions calculus"); *McCord v. Maggio,* 927 F.2d 844, 848 (5th Cir.1991) ("unquestionably a health hazard" to be in "filthy water contaminated with human waste"). And when a risk is so "obvious" that "a reasonable prison official would have noticed it," knowledge of that risk is presumed. *See, e.g.*, *Patel v. Lanier Cnty. Georgia*, 969 F.3d 1173, 1190 (11th Cir. 2020) (risk inferred when plaintiff left in hot, unventilated transport van without air conditioning). This obvious risk is compounded by—drawing reasonable inferences in Mr. Hamlet's favor—Officer Hoxie's awareness of Mr. Hamlet's diabetes and open wounds, which exacerbated the risk of harm. Mr. Hamlet informed Defendant Hoxie of the conditions of the shower, and instead of letting Mr. Hamlet exit the shower: (1) Defendant Hoxie blamed Mr. Hamlet for the conditions of the shower, (2) pushed Mr. Hamlet back in the shower, (3) locked Mr. Hamlet in the shower, and (4) deprived Mr. Hamlet of the ability to clean the feces from his open wounds for two weeks. A reasonable jury could conclude that Defendant Hoxie was aware of a risk

of harm to Mr. Hamlet and deliberately disregarded that risk. *See Caldwell*, 748 F.3d at 1102.

In *Brooks*, the plaintiff "begged [the officer] to let him remove his jumpsuit and use the toilet, so [the officer] was plainly aware of the risk [the plaintiff] faced." *Brooks* 800 F.3d, at 1305. But "[the officer] did not 'respond reasonably' to [his] request"—ridiculing him instead as he soiled himself. *Id*. That amounted to deliberate indifference. *Id*. Officer Hoxie's disregard was even more pronounced. The district court erred in evaluating the subjective prong.

3. Officer Hoxie Caused The Eighth Amendment Violation.

"Finally, there is no dispute as to the causation element of [Mr. Hamlet's] hygiene claim." *Brooks*, 800 F.3d at 1305. Because "[c]ausation, of course, can be shown by personal participation in the constitutional violation." *Goebert*, 510 F.3d at 1327. In *Brooks*, the defendant officer "supervised him in the hospital, refused his requests to use the toilet, refused to allow the nurses to clean him, and refused him the use of an adult diaper." *Brooks*, 800 F.3d at 1305. Thus, this court concluded those "actions directly resulted in an alleged Eighth Amendment violation." *Id.*

Here, Officer Hoxie supervised the unit where Mr. Hamlet was confined, and it was his job to ensure the showers were inspected. It was Officer Hoxie that pushed Mr. Hamlet back into water teeming with urine and feces after Mr. Hamlet called to him for release from the shower because it contained excrement. It was Officer Hoxie that "left [him] with nothing to clean the feces and urine off [him]self." ECF 130 (Order) at 3. And it was Officer Hoxie who "told the officers not to let [Mr. Hamlet] take a shower that week." ECF 112, Ex. 1 at 16, 49. Thus, the feces remained on his open wounds, slowly infecting Mr. Hamlet's body because of Officer Hoxie.

Unlike in *Brooks, Bilal*, and *Saunders*, Officer Hoxie's deliberate indifference to unsanitary conditions of confinement resulted in actual serious harm: a "bacterial infection [that] completely destroyed Mr. Hamlet's heart valves, necessitating heart valve surgery to *save his life*." ECF 130 (Order) at 3. (internal quotation marks omitted) (emphasis added). Following the surgery, Mr. Hamlet was hospitalized for two months, "during which he was unable to walk, stand, or use the restroom on his own." ECF 130 (Order) at 3. And to this day, Mr. Hamlet still

struggles with walking. Officer Hoxie's actions directly caused these circumstances.

* * * * *

At a minimum, Mr. Hamlet presented evidence to raise a genuine issue of material fact as to whether Officer Hoxie was deliberately indifferent. *See, e.g.*, *Vinning-El v. Long*, 482 F.3d 923, 925 (7th Cir. 2007) (denying summary judgment because "[g]iven the conditions [appellant] describes—a floor covered with water, a broken toilet, feces and blood smeared along the wall, and no mattress to sleep on—a reasonable jury could infer that prison guards working in the vicinity necessarily would have known about the condition[s]"). The district court erred in granting Officer Hoxie's summary judgment motion.

B. Officer Hoxie Is Not Entitled To Qualified Immunity.

Qualified immunity protects government officials from "liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). On the flipside, those government officials who are "plainly incompetent" or "knowingly violate the law" are not entitled to qualified immunity.

Malley v. Briggs, 475 U.S. 335, 341 (1986). Officer Hoxie does not benefit from the defense.

The unlawfulness of Officer Hoxie's conduct was established by 1971, when this Court held that prison officials violate the Eighth Amendment by placing prisoners "in contact and close proximity with excrement." *Brooks*, 800 F.3d at 1304. As this Court explained in 2016:

> [B]oth *Baird* and *Novak* . . . should have been sufficient to put [Officer Hoxie] on notice. *Baird* recognized that Eighth Amendment violations can arise from 'conditions lacking basic sanitation,' including inadequate provision of hygiene items such as toilet paper. *Novak* noted that 'deprivation of basic elements of hygiene' was a 'common thread' running through prison conditions cases, including several involving proximity to human waste. It's true that neither case involved the precise circumstances at issue here. But '[e]xact factual identity with a previously decided case is not required.' *Baird* and *Novak*, together, would have provided 'fair and clear warning' that [Mr. Hamlet's] alleged treatment would violate the Eighth Amendment.

Brooks, 800 F.3d at 1306 (citations omitted). If *Baird* and *Novak* were not enough to put Officer Hoxie on notice, *Brooks* surely was. *Id*. at 1305-06.

Regardless, "a reasonable official should not have needed" *Brooks, Baird,* or *Novak* "to know that [Officer Hoxie's] alleged actions violated [Mr. Hamlet's] Eighth Amendment rights. This is the rare case[] of obvious clarity, in which conduct is so egregious that no prior case law

is needed to put a reasonable officer on notice of its unconstitutionality." *Brooks*, 800 F.3d at 1307; *see also Taylor*, 141 S. Ct. at 54 ("Confronted with the particularly egregious facts of this case, any reasonable officer should have realized that [plaintiff's] conditions of confinement offended the Constitution."); *Hope*, 536 U.S. at 741 ("[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances."). Locking an incarcerated person in a shower flooded with urine and feces, while depriving them of any means to clean the feces from their open wounds—including subsequent showers—"creates an obvious health risk and is an affront to human dignity." *Brooks*, 800 F.3d at 1307. Officer Hoxie is not entitled to qualified immunity.[11]

II. DEFENDANTS VIOLATED MR. HAMLET'S FIRST AMENDMENT RIGHTS AND ARE NOT ENTITLED TO QUALIFIED IMMUNITY.

Officer K. Shultheiss launched an unlawful retaliation campaign against Mr. Hamlet. *Infra* § IIA. When Mr. Hamlet challenged Officer K. Shultheiss's fabricated D.R. and otherwise complained about his

[11] This Court need not reach the question of qualified immunity with respect to this or any of Mr. Hamlet's claims because the district court did not, and this is a court of review not first view. *Callahan v. United States HHS*, 939 F.3d 1251, 1266 (11th Cir. 2019).

conditions of his confinement, he engaged in protected speech. *Infra* § IIA1. Officer K. Shultheiss conspired with other prison officials to harass Mr. Hamlet, resulting in her husband (Lt. A. Shultheiss) sentencing him to solitary confinement, which could deter individuals from challenging false reports. *Infra* § IIA2. There is a clear causal relationship between Mr. Hamlet's protected speech and Defendants' retaliation campaign. *Infra* § IIA3. And, since prison officials have been on notice since 2006, that it is unlawful to retaliate under these circumstances, Defendants are not entitled to qualified immunity. *Infra* § IIB. The district court erred in dismissing this claim.

A. Mr. Hamlet Sufficiently Pled A First Amendment Retaliation Claim.

"The First Amendment forbids prison officials from retaliating against [incarcerated individuals] for exercising the right of free speech." *Farrow v. West*, 320 F.3d 1235, 1248 (11th Cir. 2003). To prove a First Amendment retaliation claim, a plaintiff must demonstrate (1) the plaintiff's speech was constitutionally protected; (2) the plaintiff suffered adverse, retaliatory actions that would likely deter a person from engaging in such speech; and (3) there is a causal relationship between

the retaliatory action and protected speech. *Smith v. Mosley*, 532 F.3d 1270, 1276 (11th Cir. 2008).

At the motion to dismiss stage, a claim must only "contain enough facts to state a claim of retaliation by prison officials that is plausible on its face." *Douglas v. Yates*, 535 F.3d 1316, 1321 (11th Cir. 2008) (citation and quotation marks omitted). And the Court must liberally construe a *pro se* plaintiff's retaliation claim. *See, e.g.*, *Boxer X v. Harris,* 437 F.3d 1107, 1112 (11th Cir. 2006) ("Boxer expressly claims that he was punished for complaining through the established grievance system about his treatment by Harris. The liberal construction that we must give this assertion is sufficient to state a retaliation claim under § 1983."), *abrogated on other grounds*, *Sconiers v. Lockhart*, 946 F.3d 1256 (11th Cir. 2020).

1. Challenging Officer K. Shultheiss's Fabricated D.R. And Complaining About His Conditions Of Confinement Were Constitutionally Protected Speech.

"It is an established principle of constitutional law that an [incarcerated individual] is considered to be exercising [their] First Amendment right of freedom of speech when [they] complain[] to the prison's administrators about the conditions of [their] confinement,"

including by filing "grievances." *Mosley*, 532 F.3d at 1276. "First Amendment rights to free speech and to petition the government for a redress of grievances are violated when [an incarcerated individual] is punished for filing a grievance concerning the conditions of [their] imprisonment." *Boxer*, 437 F.3d at 1112. Additionally, several courts of appeals have had occasion to hold that the specific act of challenging a disciplinary report is protected speech.[12] *See, e.g.*, *Fogle v. Pierson*, 435 F.3d 1252, 1264 (10th Cir. 2006).

Here, the district court initially got it right: "[L]iberally construing his allegations, [P]laintiff alleges that he filed previous grievances against Officer K. Shultheiss for falsely accusing him of threatening her and against Officer K. Shultheiss and Lt. A. Shultheiss for refusing to let him eat after taking insulin. Thus, he has adequately alleged that the First Amendment protected these complaints." ECF 25 at 5.

[12] Some courts also describe this type of retaliation claim as a violation of substantive due process, but this Court "considers it more a First Amendment retaliation claim" and regardless of the label, this "Court recognizes that an [incarcerated individual] has a § 1983 action if prison officials file false disciplinary charges in retaliation for [them] exercising [their] right to free speech by making grievances about prison conditions." *O'Bryant v. Finch*, 637 F.3d 1207, 1209 (11th Cir. 2011).

His grievances, like that of the *Boxer* and *Mosley* plaintiffs, complained "to the prison's administrators about the conditions of his confinement," *Mosley*, 532 F.3d at 1276, making them constitutionally protected speech. After Mr. Hamlet complained that Officer K. Shultheiss harassed him by filling a fabricated D.R. against him, which claimed that he confronted her with a raised weapon in an alleyway, the meritless D.R. was dismissed. After Mr. Hamlet successfully challenged that fabricated D.R. and engaged in protected speech, Officer K. Shultheiss launched a retaliation campaign against Mr. Hamlet. This retaliation campaign would likely deter others from filing grievances. *See infra*.

2. Mr. Hamlet Suffered Adverse, Retaliatory Actions That Would Likely Deter A Person From Filing Additional Grievances.

After Mr. Hamlet challenged Officer K. Shultheiss's fabricated D.R., she engaged in a campaign of harassment and retaliation. "The gist of a retaliation claim is that a prisoner is penalized for exercising the right of free speech." *Thomas v. Evans*, 880 F.2d 1235, 1242 (11th Cir. 1989). And "[t]he penalty need not rise to the level of a separate constitutional violation." *Id.* "A plaintiff suffers adverse action if the

defendant's allegedly retaliatory conduct would likely deter a person of ordinary firmness from the exercise of First Amendment rights." *Bennett v. Hendrix*, 423 F.3d 1247, 1254 (11th Cir. 2005).

A plaintiff must allege "facts that a jury could find would deter a person of ordinary firmness from the exercise of First Amendment rights." *Id.* "[T]he effect on freedom of speech may be small, but since there is no justification for harassing people for exercising their constitutional rights it need not be great in order to be actionable." *Id.* And whether the disciplinary action "'would likely deter' presents an objective standard and a factual inquiry." *Mosley*, 532 F.3d at 1277.

Here, Mr. Hamlet alleged facts—which this Court must take as true at the pleading stage—that a jury could find would deter a person of ordinary firmness from exercising their First Amendment rights. Mr. Hamlet alleges that Officer K. Shultheiss verbally abused him, calling him "a bitch," and continually harassed him, including regularly ordering him to leave the dining room. ECF 28 at 2. Most substantially, Mr. Hamlet alleges that Officer K. Shultheiss, in retaliation against Mr. Hamlet, filed a second fabricated D.R. that resulted in Lt. A. Shultheiss sentencing Mr. Hamlet to thirty days in solitary confinement.

And Officer K. Shultheiss not only participated in this retaliation, but also enlisted other officers, including her husband (Lt. A. Shultheiss) to oversee a sham hearing, which ensured Mr. Hamlet failed challenging the second fabricated D.R. and was sentenced to solitary confinement. If incarcerated individuals believed that officers would subject them to a false disciplinary report, a sham hearing, and sentence them to thirty days in solitary confinement for challenging a fabricated disciplinary report, it would deter them from exercising their First Amendment rights to challenge the initial fabricated report and file other grievances.

In fact, this Court, in *Douglas v. Yates*, found deterrence was established with nearly identical facts. 535 F.3d 1316, 1321 (11th Cir. 2008). The allegations there included harassment, verbal threats, mental abuse, physical intimidation and fabricated disciplinary reports—all resulting in "more severe confinement." *Id.* This Court found the plaintiff's "complaint contain[ed] plausible allegations of retaliation." *Id.* If the *Douglas* plaintiff alleged facts that would deter a person of ordinary firmness from exercising their First Amendment rights, so too did Mr. Hamlet when he alleged harassment, verbal abuse, a fabricated disciplinary report, and a sham hearing—all resulting in "more severe

confinement." And there is a clear causal connection between Defendants' actions and Mr. Hamlet's protected speech. *Infra*.

3. There Is A Causal Relationship Between Mr. Hamlet's Protected Speech And Officer K. Shultheiss's Retaliation Campaign.

There is a causal connection between Mr. Hamlet challenging Officer K. Shultheiss's fabricated disciplinary report and filing other grievances, her fabricating another false report against him, and her husband finding him guilty without adequate due process and sentencing Mr. Hamlet to solitary confinement. "As to the causal connection element, [a plaintiff] must allege facts that, taken as true, show that the adverse action was motivated at least in part by [the plaintiff's] protected conduct. This initial establishment of a prima facie case is all that is required." *Harper v. Admin. Lt.*, 857 F. App'x 551, 555 (11th Cir. 2021). "The causal connection inquiry asks whether the defendants were subjectively motivated to discipline because [a plaintiff] complained of some of the conditions of [their] confinement." *Mosley*, 532 F.3d at 1278. And to rebuff a motion to dismiss, a plaintiff must "allege facts that, taken as true, show that 'the adverse action was motivated at least in

part by [their] protected conduct.'" *Harper*, 857 F. App'x at 555; *see also Moton v. Cowart*, 631 F.3d 1337, 1342 (11th Cir. 2011).

In *Boxer*, the only factual assertion the plaintiff made regarding their retaliation claim is "he was punished for complaining through the established grievance system about his treatment by [the defendant]." *Boxer*, 437 F.3d at 1112. The Court held that this was "sufficient to state a retaliation claim." *Id.*

Here, Mr. Hamlet alleged far more specific facts and showed a far clearer causal connection between his protected speech and the adverse action of Officer K. Shultheiss—Mr. Hamlet alleged that after he challenged the fabricated D.R. from Officer K. Shultheiss and filed grievances, he lived "in fear of this officer because of her hate for [him]." ECF 74 at 10. And specifically, he alleged that his protected speech resulted in harassment, verbal abuse, another fabricated D.R., a sham hearing, and a sentence of solitary confinement. These facts, taken as true, show that Mr. Hamlet's protected speech—challenging the fabricated D.R. and writing grievances—motivated these adverse actions.

Further, in *Allen*, the plaintiff alleged that a group of corrections officers (spouses and friends) conspired to retaliate against the plaintiff for filing a grievance against one of the officers. *Allen v. Sec'y, Fla. Dep't of Corr.*, 578 F. App'x 836, 841 (11th Cir. 2014). This Court held that because the plaintiff "stated a claim for conspiracy among Defendants that is plausible on its face, he has alleged sufficiently a causal connection between his protected speech and Defendant's alleged retaliatory acts." *Id.*

Here, Mr. Hamlet alleged a conspiracy between Officer K. Shultheiss and other officers, including her husband (Lt. A. Shultheiss) and alleged a connection between his protected speech and their retaliatory acts. Defendants conspired to retaliate against Mr. Hamlet by harassing him, filing the fabricated D.R. against him, holding a sham hearing, and sentencing him to thirty days in solitary confinement. They did this because Mr. Hamlet challenged the initial fabricated D.R. and filed grievances against them. These facts, taken as true, show a causal connection between the adverse actions of Officer K. Shultheiss and Lt. A. Shultheiss, and Mr. Hamlet's protected conduct. Defendants launched

an unlawful retaliatory campaign against Mr. Hamlet because of his protected conduct.

Liberally construed, Mr. Hamlet pled facts to state a claim of First Amendment retaliation by prison officials that are plausible on its face. *See Logan v. Hall*, 604 F. App'x 838, 841 (11th Cir. 2015) ("[C]onstrued liberally, the complaint sufficiently alleged a claim for retaliation . . . for filing lawsuits and grievances, prison officials deliberately falsified reports, which resulted in him spending excessive time in disciplinary and close-management confinement and losing his yard privileges."). Further, Defendants are not entitled to qualified immunity. *See infra*.

B. Defendants Are Not Entitled To Qualified Immunity Because They Violated Mr. Hamlet's Clearly Established First Amendment Rights.

Defendants are not entitled to qualified immunity because Mr. Hamlet's First Amendment rights were clearly established by *Boxer* (2006) and *Douglas* (2008), which placed prison officials on notice that retaliating against an incarcerated individual for filing grievances and challenging conditions of confinement (including false disciplinary reports) violates the First Amendment. *See Boxer*, 437 F.3d at 1112 (finding retaliation where plaintiff "expressly claim[ed] that he was

punished for complaining through the established grievance system about his treatment by [defendant]"); *Douglas*, 535 F.3d at 1321 ("in retaliation for the grievance that [plaintiff] filed," prison officials exposed plaintiff "to mental abuse, physical intimidation, harassment, and verbal threats of injury and punishment").

Moreover, not only did this Court's prior precedent place Defendants on notice that their retaliatory behavior was a violation of Mr. Hamlet's First Amendment rights, so did Florida Department of Corrections regulations.

Regulations can provide defendants clear warning that certain actions are unlawful. *See Hope*, 536 U.S. at 744. The Florida Administrative Code's rules governing the Department of Corrections placed Defendants on notice that corrections officers are not to retaliate against incarcerated individuals for filing grievances. Fla. Admin. Code Ann. 33-103.017(1). The relevant section of the Code warns that: "Inmates shall be allowed access to the grievance process without hindrance," any "[s]taff found to be obstructing an inmate's access to the grievance process shall be subject to disciplinary action," and "[g]ood

faith use of or good faith participation in the grievance process shall not result in reprisal against the inmate." *Id.*

In addition to existing case law and the Florida Administrative Code placing Defendants on notice, Defendants' behavior amounts to an obvious violation of Mr. Hamlet's First Amendment rights. *See McCoy v. Alamu*, 141 S. Ct. 1364 (2021); *Taylor*, 141 S. Ct. at 54; *Hope*, 536 U.S. at 741.

Officer K. Shultheiss filed a fabricated disciplinary report against Mr. Hamlet in retaliation for him challenging a previous fabricated disciplinary report and filing other grievances against her and her husband. A reasonable prison official would not only appreciate that fabricating a disciplinary report is an unlawful abuse of prison procedures but that fabricating a disciplinary report to settle a score with an incarcerated individual that reported them and their spouse is an unlawful infringement on First Amendment speech. The district court erred in dismissing this claim at the pleading stage.

III. DEFENDANTS VIOLATED MR. HAMLET'S FOURTEENTH AMENDMENT RIGHTS BY TERMINATING HIS LIBERTY INTEREST IN YARD TIME AND DEPRIVING HIM OF GOOD-TIME CREDITS WITHOUT AFFORDING HIM MEANINGFUL DUE PROCESS.

When Officer K. Shultheiss initiated a second fabricated D.R. and her husband, Lt. A. Shultheiss, held a sham hearing without adequate process, Mr. Hamlet's Fourteenth Amendment Due Process rights were violated. Incarcerated persons retain the "protections of the Due Process Clause. They may not be deprived of life, liberty, or property without due process of law." *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). Vindicating a due process violation requires resolving two questions: (1) whether a protected "'liberty' or 'property' interest[] within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment" exists, *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); and, if so, (2) whether the state provided adequate process. *See id.* at 334.

Since Mr. Hamlet had a liberty interest in yard time and good-time credits, due process was required. *Infra* § IIIA. Lt. A. Shultheiss violated Mr. Hamlet's due process rights by conducting a sham disciplinary hearing—seeking vindication for his wife—without providing the

minimum degree of process set forth in *Wolff*. *Infra* § IIIB. Finally, Defendants are not entitled to qualified immunity. *Infra* § IIIC.

A. Mr. Hamlet Had A Liberty Interest In Yard Time And Good-Time Credits.

A liberty interest arises when a change in the individual's conditions of confinement imposes an "atypical and significant" hardship in comparison to ordinary conditions of prison life. *Bass v. Perrin*, 170 F.3d 1312, 1318 (11th Cir. 1999). Mr. Hamlet had a liberty interest in yard time and in good-time credits, both of which evaporated when he was sentenced to solitary confinement.

To start, Mr. Hamlet had a liberty interest in yard time because its loss amounts to an "atypical and significant" hardship in comparison to the ordinary conditions of prison life. *Bass*, 170 F.3d at 1318. As this Court has explained, "the marginal value" of "two hours" of yard time—while seemingly insignificant—is sufficiently "substantial," particularly to a person in solitary confinement, to invoke a liberty interest. *Id.* In fact, incarcerated individuals in Florida "have a state-created interest in yard time" because Florida regulations require as much. *Id.* At the time of Mr. Hamlet's deprivation of yard time, Florida regulations entitled Mr. Hamlet to six-hours out-of-cell recreation per week. Fla. Admin. Code

Ann. 33-6-1.800(10)(m). At the pleading stage, Mr. Hamlet was only required to allege a plausible claim of atypical and significant hardship, allowing for the trier of fact to evaluate the conditions of his confinement compared to other incarcerated individuals. *See, e.g.*¸ *Wallace v. Hamrick*, 229 F. App'x 827, 830 (11th Cir. 2007) (reversing dismissal because plaintiff alleging denial of yard time sufficiently pled facts demonstrating atypical and significant hardship to allow more exploration of record by trier of fact). He more than satisfied his pleading burden.

While in solitary confinement, Mr. Hamlet "never left the cell for anything other than to take a shower." ECF 112, Ex. 1 at 26. The district court determined that "the imposition of confinement based on a false disciplinary report does not, standing alone, create a liberty interest." ECF 28 at 5. While it may be correct that 30 days in solitary confinement standing alone does not automatically create a liberty interest, the district court ignored Mr. Hamlet's liberty interest in yard time, a deprivation distinct from the solitary sentence, as even prisoners in solitary confinement generally receive yard time. Fla. Admin. Code Ann. 33-6-1.800(10)(m). Here, as in *Bass*, Defendants deprived Mr. Hamlet of *all* yard time. Thus, the Fourteenth Amendment guaranteed Mr. Hamlet

due process before Defendants could deprive him of his liberty interest in yard time. *Bass*, 170 F.3d at 1318.

Mr. Hamlet also had a liberty interest in good-time credits. *Wolff*, 418 U.S. at 557 ("But the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the [incarcerated individual]'s interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty.'"); *see also*, *e.g.*, *Dean-Mitchell v. Reese*, 837 F.3d 1107, 1112 (2016) (deprivation of good time credits creates a liberty interest). Defendants, however, deprived him of 30 days good-time credits. ECF 119-2 at 4; Fla. Admin. Code Ann. 33-601.101 (referring to "gain time," which is FDOC nomenclature for good-time credits). The district court erred in holding that Mr. Hamlet did not have a liberty interest.

B. Defendants Failed To Provide Mr. Hamlet Meaningful Process.

Defendants owed Mr. Hamlet appropriate due process before they terminated his liberty interest.[13] "'The fundamental requisite of due

[13] The district court did not reach this prong. This Court may do so in the first instance or choose to remand to the district court to take the first look.

process of law is the opportunity to be heard' . . . 'at a meaningful time and in a meaningful manner.'" *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970). Such rights are particularly "important in cases such as those before us, where [individuals] have challenged proposed terminations [of liberty] on incorrect or misleading factual premises." *Id.* at 268. In fact, the "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Mathews*, 424 U.S. at 333.

In *Wolff*, the Supreme Court set forth the requirements of formal process that must accompany disciplinary punishment.[14] The relevant requisite elements are: (1) a hearing; (2) advance written notice of the charges "to enable him to marshal the facts and prepare a defense"; (3) a "written statement by the factfinders as to the evidence relied on and reasons' for the disciplinary action"; (4) the ability "to call witnesses and present documentary evidence in his defense;" (5) assistance in

[14] Since Mr. Hamlet was confined pursuant to a disciplinary sanction rather than for administrative purposes, formal process was required. *See* ECF 115 at 11.

presenting his case if he was impaired due to his medical conditions; and (6) impartiality. *Wolff*, 418 U.S. at 563-572.

Mr. Hamlet's disciplinary hearing did not comport with *Wolff*. First, Lt. A. Shultheiss found Mr. Hamlet guilty without a written statement of the evidence relied on for the determination and the reasons for the disciplinary action. As Mr. Hamlet alleged, the "failure to provide a meaningful explanation of the finding of guilt denied due process." ECF 115 at 11. Mr. Hamlet even appealed to Warden Bryner, seeking clarity on why Defendants violated his due process rights—to no avail. *See* ECF 126 at 11.

Second, Mr. Hamlet was prevented from calling witnesses. Mr. Mitchell, the Food Service Director, was present when Officer K. Shultheiss called Mr. Hamlet a "bitch," and could confirm as much. Even though Mr. Mitchell was present when Mr. Hamlet's *alleged* misconduct occurred and could testify to what was said, Lt. A. Shultheiss never called him forward as a witness.[15] Depriving Mr. Hamlet of a material witness

[15] Although Mr. Hamlet did not specifically allege that Lt. A. Shultheiss refused to call Mr. Mitchell, that inference is appropriate considering both Mr. Hamlet's allegation that the witness could exonerate him but was not called, ECF 115 at 10, and the liberal construction afforded to pro se litigants.

that could exonerate him, when doing so is not "unduly hazardous to institutional safety or correctional goals," contravenes due process. *Wolff*, 418 U.S. at 566.

Finally, although "an impartial decisionmaker is a fundamental requirement of due process," *Wolff*, 418 U.S. at 592 (Marshall, J., concurring in part), the disciplinary hearing was conducted by the complainant's husband. Underscoring the tendency of relatives to lack impartiality when it comes to the conduct of loved ones, the Florida Department of Corrections regulations prohibit the direct supervision or advocacy of a relative employee by Department of Corrections employees. Fla. Admin. Code Ann. 33-208.004(2), 33-208.004(3). It is difficult to imagine a more intractable conflict than one family member sitting in judgment of a prisoner charged with calling another family member a "bitch."

C. Defendants Are Not Entitled To Qualified Immunity.

Since Mr. Hamlet retained a liberty interest in yard time and good-time credits, *see supra* § IIIA, and Defendants terminated that interest without adequate due process, *see supra* § IIIB—Defendants are not entitled to qualified immunity unless they can demonstrate the right to

process was not clearly established, *Harlow*, 457 U.S. at 818; *see also supra* § IB. But they cannot. In 1974, *Wolff* set forth the degree of process that is due before prison officials can terminate a liberty interest after a disciplinary hearing. *Wolff*, 418 U.S. at 563-572, 592. And in 1999, *Bass* placed prison officials on notice that due process is required before depriving an incarcerated individual of yard time. *Bass*, 170 F.3d at 1318.

Additionally, the Florida Administrative Code made it explicitly clear to Officer K. Shultheiss and Lt. A. Shultheiss that neither could oversee the work of the other, which constitutes additional notice. *See Hope*, 536 U.S. at 744. Defendants are not entitled to qualified immunity.

CONCLUSION

For the foregoing reasons, the Court should reverse and remand the district court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2021, I electronically filed the foregoing *Brief of Appellant* with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the 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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