No. 21-5540

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DANIEL LYNN WILLIAMS,

Plaintiff-Appellant,

v.

HILTON HALL, JR, Warden; CASE MANAGER MALONE; SERGEANT MANN; UNIT MANAGER S. JONES; CORECIVIC,

Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Tennessee, No. 1:20-cv-1171
Before the Hon. James D. Todd

PLAINTIFF-APPELLANT'S OPENING BRIEF

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Appellant Daniel Williams, through *pro bono* counsel, respectfully urges this Court to hold oral argument in this appeal. And because this Court would benefit from full adversarial briefing, Mr. Williams also respectfully requests that this Court order the defendants or the Tennessee Attorney General to appear, either as appellees or amicus curiae.

First, this appeal presents several unresolved issues involving the interpretation of a frequently implicated provision of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(e). This Court has repeatedly deferred resolution of one of these issues in recent cases due to lack of adversarial briefing and argument; this Court should not further delay answering this question. On another of these issues, affirmance would create a split with the Eighth and Tenth Circuits. *Second*, this case requires this Court to confront a conflict between its precedent and an intervening Supreme Court decision. Although this Court can and should overrule its prior decision because it is incompatible with current Supreme Court precedent, that is not something this Court does lightly, and argument would assist the Court in resolving the conflict.

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STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983. Final judgment was entered on April 26, 2021. Judgment, R. 9, PageID # 23. Plaintiff-Appellant Daniel Lynn Williams timely filed a notice of appeal on May 26, 2021, which was received by the district court and docketed on June 1, 2021.[1] Notice of Appeal, R. 10-1, PageID # 25.

STATEMENT OF ISSUES

1. A provision of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(e), bars compensatory damages for mental or emotional injury without "a prior showing of physical injury or the commission of a sexual act." Did the district court err in imposing—without basis in statutory text or precedent—a requirement that the predicate "physical injury" or "sexual act" be caused by the unconstitutional conduct at issue in each claim?

[1] Mr. Williams's May 26, 2021, declaration makes his filing timely under Federal Rule of Appellate Procedure 4(c)(1)(a)(i).

2. Is this Court's rule that a "physical injury" under § 1997e(e) must be more than *de minimis* irreconcilable with the Supreme Court's decision in *Wilkins v. Gaddy*?

3. Even if § 1997e(e) contains an atextual more-than-*de-minimis* requirement, is being hit in the head more than *de minimis* in light of modern medical understanding around brain injuries?

4. Does § 1997e(e) apply to compensatory damages for Eighth Amendment constitutional injuries, given this Court's holding that the statute does not apply to constitutional injuries under the First Amendment?

5. Did the district court err in imposing a heightened pleading standard—one inconsistent with the Federal Rules of Civil Procedure and the PLRA—on Mr. Williams's request for injunctive relief?

6. Did Mr. Williams state a failure-to-protect claim, where (A) in the weeks leading up to his rape at the hands of a prison gang member, Mr. Williams repeatedly warned his unit counselor that the gang was threatening him and asked for her help, only to be ignored; and (B) prison officials refused Mr. Williams's repeated requests for protection after the

prison gang found out Mr. Williams reported his rape and, in retaliation, subjected him to ongoing harms and threats?

7. Did Mr. Williams adequately allege a denial of medical care claim, given that prison officials outright refused Mr. Williams's repeated requests to contact mental health services for treatment of his severe post-rape anxiety and PTSD?

8. Did the district court have jurisdiction to impose a "strike" under the PLRA, in light of this Court's recent holding that district courts may not bind later courts by imposing a strike at the time of dismissal?

STATEMENT OF THE CASE

I. Factual Background

While incarcerated at Hardeman County Correctional Facility in the spring of 2020, Daniel Lynn Williams became the unlucky recipient of attention from a prison gang. Believing that Mr. Williams had played a part in getting the prison gang's cellphone confiscated, gang members began to target him in retaliation. Complaint, R. 1, PageID # 5. For several weeks, gang members told Mr. Williams that he was at fault for the loss of their phones, and that he now had to do what they said or else they would stab him. *Id.* Mr. Williams repeatedly begged his unit counselor for help. *Id.* at PageID # 5, 13. But those pleas fell on deaf

ears. His counselor refused to help, telling him that he was not going to receive any assistance, that she was too busy, and that she did not want to hear about his fears—eventually, she even ordered him to "go back to [his] f***ing cell now!" as he begged for protection. *Id.*

Mr. Williams was right to be concerned for his safety. Members of the prison gang confronted Mr. Williams, pushed him to the floor, and hit him hard in the head. *Id.* The prison gang then sodomized Mr. Williams and forced him to perform oral sex on one of their members, under threat of being stabbed if he did not comply. *Id.*

Several days after he was raped, Mr. Williams was moved to segregated housing, where he heard guards talking to each other about his assault. *Id.* at PageID # 13. While Mr. Williams was in protective custody, guards told those incarcerated with Mr. Williams—some of whom were affiliated with the same gang that had terrorized Mr. Williams before—that Mr. Williams had gotten their "brother" in trouble by reporting his rape. *Id.* at PageID # 5, 13. In response, gang members broke into Mr. Williams's cell—which guards perpetually left unlocked in violation of protocol—and held a knife to his throat. *Id.* at PageID # 5-6. The prison gang also threatened Mr. Williams should he not pay them a

weekly extortion fee of $50. *Id.* Scared for his life, Mr. Williams complied. *Id.* at PageID # 5. Even so, Mr. Williams continued to suffer physical abuse from the gang, including another blow to the head and being repeatedly held at knifepoint, as well as verbal threats, such as telling Mr. Williams that they would send him "leaking" to the morgue. *Id.* at PageID # 14. Because guards would open his cell (against prison rules), he could not even lock himself away for protection. *Id.* Instead, gang members were allowed to break in and steal his belongings. *Id.* The gang also taunted him from outside by throwing urine under his door. *Id.*

Throughout this abuse, Mr. Williams consistently and desperately sought help from prison officials, including all named defendants, but was universally rebuffed. Mr. Williams wrote to Warden Hilton Hall three times, informing him that other prisoners had threatened to kill Mr. Williams and had repeatedly held him at knifepoint, and requesting Warden Hall's help in being moved to another institution, or at least to another unit. *Id.* at PageID # 5-6, 14. Warden Hall ignored these requests. *Id.* Mr. Williams also wrote to Case Manager Malone and Unit Manager Jones, pleading with them to transfer him because other

prisoners were threatening to kill him, but received no response. *Id.* at PageID # 6, 14. Finally, Mr. Williams complained to Sergeant Mann, who did not ignore him. Instead, she came into a communal living area to admonish Mr. Williams in front of other prisoners, warning him to stop reporting the threats and abuse he faced, and broadcasting her disinclination to do anything about his situation. *Id.* at PageID # 5, 14. The day after Sergeant Mann made this public announcement, a copy of Mr. Williams's charges, including a sex offense, coincidentally showed up on a table in the same living area for all other prisoners to see. *Id.*

Unsurprisingly, the combination of being raped, physically assaulted, constantly threatened, and stonewalled by the prison has taken an enormous toll on Mr. Williams's mental health. He described his violent rape as a trauma that will "haunt [him] the rest of [his] life." *Id.* at PageID # 6. The danger Mr. Williams faced after his rape only exacerbated his mental anguish. *See id.* His nerves are shot from enduring ever-present danger; he "shake[s], and cr[ies], and stay[s] paranoid all the time." *Id.* "Scenes" from his rape play "in [his] head over" and over—"all [the] time." *Id.* at PageID # 14. His plight has left him mostly unable to sleep. *Id.* When he can sleep, he often dreams

about dying at the hands of the prisoners who were "tormenting" him. *Id.* at PageID # 15.

The prison, however, proved no more helpful in treating Mr. Williams's mental health than it did in protecting his physical safety. Following his rape, Mr. Williams was able to leave his living unit and reach out to the prison's mental health providers, who helped move him to segregated housing. *Id.* at PageID # 13. But after being returned to the general population, prison officials completely denied Mr. Williams any access to mental health treatment. *Id.* at PageID # 5, 14. He repeatedly asked Case Manager Malone and other prison staff to connect him with mental health services. *Id.* But all of them refused, *id.* at PageID # 14, instead falsely claiming that mental health services "didn't want to see [him]," *id.* at PageID # 5, or simply telling him that they would not call, *id.* at PageID # 14.

II. Procedural Background

Mr. Williams filed suit *pro se*. As relevant on appeal, he alleged that defendants Warden Hall, Case Manager Malone, Sergeant Mann, Unit Manager Jones, J-B Unit Counselor, and unidentified G-Unit Guards violated his Eighth Amendment rights by failing to protect him

and by denying him access to mental health treatment.[2] Complaint, R. 1, PageID # 5-6, 13-16. The district court dismissed all of Mr. Williams's claims at the pre-service screening stage under 28 U.S.C. § 1915A.

The court provided three reasons for finding that Mr. Williams had not pled a plausible failure-to-protect claim. Order, R. 7, PageID # 10-14. First, the district court held that Mr. Williams had failed to clearly allege a failure-to-protect claim stemming from his initial rape. *Id.* at PageID # 12. Somewhat perplexingly, the court noted that Mr. Williams did not "explain why his assailant and other gang members believed he was responsible for the loss of their cell phone," *id.*, despite the irrelevance of that issue to the failure-to-protect analysis. And despite Mr. Williams's allegations that his unit counselor ignored his repeated, desperate pleas for protection from the prison gang in the three weeks leading up to his rape, *see supra* at 3-4, the court stated that Mr. Williams did not "allege that any of the named Defendants actually knew of, and yet disregarded, a significant risk the attack would occur." Order, R. 7, PageID # 12.

[2] Mr. Williams does not appeal the dismissal of his claims for unconstitutional conditions of confinement or retaliation, nor his official-capacity claims against the defendants.

Second, as to the post-rape attacks, death threats, and substantial risk of future harm, the court held that Mr. Williams's failure-to-protect claim was barred by 42 U.S.C. § 1997e(e), which prohibits compensatory damages for "mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act." *Id.* at PageID #13. The court reasoning's was fourfold: (1) the statute requires a physical injury that is more than *de minimis*; (2) Mr. Williams hadn't alleged that the "blow to the head" he received from the prison gang in retaliation for reporting his rape "caused any actual injury"; (3) while Mr. Williams was raped by the prison gang (a "sexual act"), he hadn't suffered *another* sexual assault after the first rape; (4) Mr. Williams's requested injunctive relief in the form of a transfer to another prison—that is, relief outside the scope of § 1997e(e)'s restrictions—was unavailable because "his allegations do not suggest he is in [] imminent or grave danger." *Id.* at PageID # 13-14. The district court did, however, hold that Mr. Williams adequately alleged "conditions posing a substantial risk of serious harm," and he sufficiently pled that at least Sergeant Mann was deliberately indifferent to his safety. *Id.* at PageID # 13.

Third, the district court analyzed Mr. Williams's failure-to-protect claim against defendants Warden Hall, Case Manager Malone, and Unit Manager Jones as though each were supervisors.[3] *Id.* at PageID # 10-11. The district court acknowledged that Mr. Williams wrote numerous letters to these three defendants informing them of the danger he faced and requesting their help to protect him. *Id.* But it held that this alleged failure to respond after being informed of the substantial risk Mr. Williams faced was not a sufficient allegation that these defendants "through their own individual actions[] violated his constitutional rights." *Id.* at PageID # 11.

As for the denial of Mr. Williams's mental health care claim, the district court acknowledged that mental health issues "fall within the scope of a serious medical need," and that prison officials had denied Mr. Williams's multiple requests for mental health services. *Id.* at PageID # 15. But the court concluded that Mr. Williams had not adequately alleged *which* prison officials denied his requests—even though, in the very same sentence, it quoted an allegation naming Mr. Williams's case

[3] It's unclear why the district court analyzed Case Manager Malone's involvement from a supervisor perspective; there is no indication that case manager is a supervisory role.

manager (that is, defendant Case Manager Malone) as one of the responsible parties. *Id.*

The district court granted leave to amend, but because Mr. Williams did not file an amended complaint by the deadline, the court dismissed his case with prejudice. *See* Order Dismissing Case, R. 8, PageID # 21-22. The district court also purported to assess a "strike" under the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), and denied Mr. Williams leave to appeal *in forma pauperis*. *Id.* Mr. Williams timely appealed. Notice of Appeal, R. 10-1, PageID # 25.

SUMMARY OF ARGUMENT

I. The district court held that 42 U.S.C. § 1997e(e), which bars incarcerated plaintiffs from seeking compensatory damages for mental or emotional injury suffered while in custody without "a prior showing of a physical injury or the commission of a sexual act," foreclosed Mr. Williams's claims. That was wrong: Mr. Williams alleged both a sexual act and physical injury, and also sought multiple forms of relief unaffected by § 1997e(e)'s strictures. **A.** Mr. Williams's rape is unquestionably a "sexual act" under the statutory definition. But the district court imposed an atextual requirement that in order to satisfy

§ 1997e(e), the predicate sexual act or physical injury must have been *caused* by the unconstitutional conduct at issue in each claim. This cramped interpretation has no basis in the statute's text; Congress knows how to add causal language when it wants to—as it often does—and its choice to omit such language here must be respected. Nor does it find any support in precedent; this Court's sister circuits have universally rejected similar attempts. **B.** Mr. Williams also alleged a physical injury: being hit in the head by the prison gang who targeted him. The district court, however, held that § 1997e(e) requires not just a physical injury, but a physical injury that is "more than *de minimis*," and that being hit in the head is not. **1.** Imposing a "more-than-*de-minimis*" requirement is incompatible with basic principles of statutory interpretation; it finds no support in the statute's text, structure, or history. **2.** This Court's previous indication of support for a more-than-*de-minimis* requirement is incompatible with current Supreme Court precedent. That holding relied exclusively on a Fifth Circuit case, which was premised on reasoning that the Supreme Court has since explicitly overruled (as the Fifth Circuit itself recently acknowledged). **C.** Even if a more-than-*de-minimis* injury is required, Mr. Williams's injury was not *de minimis*; it

is now well-established in the medical field that hits to the head—even ones that don't cause concussions or near-term symptoms—can result in serious, lasting brain damage.

II. The district court dismissed Mr. Williams's entire case on § 1997(e) grounds, despite Mr. Williams seeking several forms of relief beyond the scope of § 1997e(e). **A.** In *King v. Zamaria*, 788 F.3d 207, 213 (6th Cir. 2015), this Court held that § 1997e(e) does not apply to compensatory damages for constitutional injuries under the First Amendment. As recent decisions from this Court have suggested, *King*'s reasoning applies with equal force to constitutional injuries under the Eighth Amendment. **B.** Mr. Williams requested injunctive relief—which is not barred by § 1997e(e)—in the form of a transfer. But the district court cast that request aside, effectively imposing a heightened pleading standard inconsistent with Supreme Court precedent, the Federal Rules of Civil Procedure, and the PLRA.

III. Mr. Williams plausibly alleged that defendants failed to protect him both before and after his rape. **A.** In the several weeks leading up to his rape, Mr. Williams repeatedly told his unit counselor that the prison gang was threatening him and requested help; those requests

were ignored. The district court seemed to dismiss this claim on the ground that the unit counselor was an unidentified defendant. But under the widely held view of this Court's sister circuits, suing an unnamed defendant is acceptable as long as the complaint provides enough description to serve the defendant, either at the outset or after reasonable discovery—a standard that is more than met here. **B.** Mr. Williams also alleged a failure-to-protect claim related to what happened to him after he was raped: the prison gang repeatedly held him at knifepoint, hit him in the head, threatened to kill him, extorted him, stole items from his cell, and threw urine on him. **1.** Although the post-rape harms that befell Mr. Williams are alone sufficiently serious under the Eighth Amendment, the district court discounted that Mr. Williams was also subject to an ongoing substantial risk of serious *future* harm—something the Supreme Court has long held the Eighth Amendment protects against. **2.** The district court erroneously minimized the significance of prison officials taking steps to *increase* Mr. Williams's risk of harm, including labeling him a "snitch" and allowing other prisoners to learn that Mr. Williams had been convicted of a sex offense—actions that can constitute deliberate indifference. **3.** The district court characterized

Mr. Williams as alleging *respondent superior* liability against the warden, case manager, and unit manager. Not so: Mr. Williams alleged that he personally informed each of those defendants about his substantial risk of serious harm and requested their help for his safety, only to be ignored.

IV. Mr. Williams adequately alleged that he was denied medical care in violation of the Eighth Amendment. His medical needs were objectively sufficiently serious: severe symptoms of anxiety and post-traumatic stress disorder, brought on by his rape. Yet prison officials outright refused Mr. Williams's repeated requests to contact mental health services. And while the district court dismissed this claim because it believed Mr. Williams had not alleged *which* prison officials denied his requests, the complaint clearly alleges that defendant Malone was one of them.

V. When the district court dismissed Mr. Williams's complaint, it purported to assess a "strike" against him under the PLRA's "three strikes" rule; this Court's recent decision in *Simons v. Washington*, 996 F.3d 350, 352 (6th Cir. 2021), makes clear that it lacked the power to do so.

STANDARD OF REVIEW

This Court reviews de novo a district court's *sua sponte* dismissal for failure to state a claim, viewing the complaint "in the light most favorable to the plaintiff" and "accept[ing] all well-pleaded factual allegations as true." *Thomas v. Eby*, 481 F.3d 434, 437 (6th Cir. 2007). *Pro se* complaints, like the one here, are "liberally construed" and "held 'to less stringent standards than formal pleadings drafted by lawyers.'" *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011). This Court also reviews de novo questions of statutory interpretation, including the proper application of the Prison Litigation Reform Act. *Vandiver v. Prison Health Servs., Inc.*, 727 F.3d 580, 584 (6th Cir. 2013).

ARGUMENT

I. Section 1997e(e) does not bar Mr. Williams's claims.

42 U.S.C. § 1997e(e), a provision of the Prison Litigation Reform Act, provides that:

> 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).

The circuits uniformly agree that § 1997e(e) does not bar claims for injunctive relief, declaratory relief, or nominal damages, and nearly all

agree that it does not apply to claims for punitive damages. *Small v. Brock*, 963 F.3d 539, 543 (6th Cir. 2020). That is, there is broad consensus that § 1997e(e) only applies to compensatory damages for mental and emotional injury, not to other types of relief. *See id.*

A. Mr. Williams's rape is a qualifying "sexual act" under § 1997e(e).

Under § 1997e(e), a plaintiff can only seek compensatory damages for mental or emotional injury with a "prior showing" of a "physical injury" or "the commission of a sexual act (as defined in section 2246 of Title 18)." There can be no serious question that Mr. Williams's rape by a member of a prison gang—during which Mr. Williams was sodomized and forced to perform oral sex—meets the statutory definition of "sexual act" in 18 U.S.C. § 2246, which Congress incorporated into § 1997e(e). *See* 18 U.S.C. § 2246(2) ("sexual act" includes "contact between . . . the penis and the anus" and "contact between the mouth and the penis").

The district court did not appear to contest that Mr. Williams's rape fell squarely within the statutory meaning of "sexual act." But without citation to authority, the district court imposed an additional, atextual requirement atop the statute: that his rape could be a predicate "sexual act" *only* for a failure-to-protect claim based on that rape, *not* for a failure-

to-protect claim stemming from his reporting of the rape, and *not* for a medical-care claim alleging he was denied mental health treatment for the anxiety and PTSD he developed after being raped. *See* Order, R. 7, PageID # 12-13. That is, the district court assumed that a sexual act or physical injury could not serve as the requisite "prior showing" unless it was *caused* by the unconstitutional conduct at issue in each claim. *Id.* Applying this groundless causal requirement, the district court held that Mr. Williams's rape was not a qualifying "sexual act" for any claim *except* a failure-to-protect claim for the rape itself—no matter how central the rape might be to his other claims. *Id.* This cramped interpretation of § 1997e(e) has no basis in statutory text, precedent, or legislative history.

Start with the text. *See United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (all statutory interpretation inquiries "must begin [] with the language of the statute itself"). Section 1997e(e) is conspicuously void of any language demanding—or even suggesting—a per-claim causal link between the requisite "prior showing of physical injury or the commission of a sexual act" and the unconstitutional conduct alleged. Congress knows how to use causal language when it wants to, and indeed often does. For instance, Congress could have

appended an "arising from" clause—language generally used to require a "causal connection"—to the end of the provision. *See N. Am. Butterfly Assoc. v. Wolf*, 977 F.3d 1244, 1260 (D.C. Cir. 2020). Congress has included such language in a variety of federal statutes governing tort liability and access to the federal courts. *See, e.g.*, *id.* at 1259-60 ("arising from" in provision limiting availability of federal court review); 38 U.S.C. § 7316(a)(1) (creating exclusive remedy for personal injury "arising from" alleged malpractice or negligence of VA healthcare employees); 42 U.S.C. § 300aa-11(a)(2)(A) (restricting civil actions for damages "arising from a vaccine-related injury or death"); *see also* 16 U.S.C. § 831c-2(a)(1) (creating exclusive remedy for "personal injury or death arising or resulting from the negligent or wrongful act or omission of" Tennessee Valley Authority employees); 42 U.S.C. § 2000aa-6(a)(1) (creating civil cause of action against government for damages "resulting from" a violation of privacy law).

This demonstrates that Congress "knows how to impose such a requirement when it wishes to do so." *Whitfield v. United States*, 543 U.S. 209, 216-17 (2005); *see also Dole Food Co. v. Patrickson*, 538 U.S. 468, 476 (2003). But Congress did not do so here. Its omission of such

causal language from the PLRA thus "indicates a deliberate congressional choice with which the courts should not interfere." *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 184 (1994).

Nor does the district court's idiosyncratic test find any support in precedent: neither this Court nor any of its sister circuits have ever so much as suggested that the statute should be read so restrictively. To the contrary, other circuits have *rejected* similarly constricted readings of § 1997e(e). For example, in *McAdoo v. Martin*, the plaintiff suffered a shoulder injury after one defendant used force—force later found constitutional at trial—in breaking up a fight between the plaintiff and another prisoner. 899 F.3d 521, 523-24 (8th Cir. 2018). The prison then failed to provide appropriate medical care for the plaintiff's injured shoulder. *Id.* The plaintiff sued the jail administrator and the officer who injured his shoulder for denial of medical care, excessive force, and failure to protect. *Id.* at 524. Although the district court found for the plaintiff on his medical care claim at trial, it granted only nominal damages, reasoning that § 1997e(e) was not satisfied and so compensatory damages were unavailable. *Id.* at 524-25. On appeal, the

defendants argued that the plaintiff's shoulder injury did not qualify as a physical injury within the meaning of § 1997e(e); in their view, the statute required that any relevant injury must have been *caused* by unconstitutional conduct, and because defendants had prevailed at trial on the excessive force claim, the shoulder injury was not caused by any unconstitutional act and thus was not a qualifying "physical injury" for the medical care claim. *Id.* at 526. The Eighth Circuit disagreed. Noting an utter lack of authority for defendants' restrictive interpretation, it rejected the idea that § 1997e(e) requires "a physical injury *caused* by an unconstitutional act." *Id.* Instead, as long as there is "a showing of physical injury, § 1997e(e) permits recovery for the harm—physical or otherwise—caused by the demonstrated unconstitutional conduct"—regardless of whether the unconstitutional conduct caused the physical injury. *Id.*

McAdoo's conclusion was influenced by the Tenth Circuit's similar decision in *Sealock v. Colorado*, 218 F.3d 1205 (10th Cir. 2000). In *Sealock*, the plaintiff awoke to symptoms of a heart attack, including chest pain; when he informed the officers on duty, he was told he had to wait until 6 AM, and ultimately wasn't taken to a hospital until the

following day. *Id.* at 1207-10. The plaintiff brought an Eighth Amendment deliberate indifference medical care claim based on the delay in receiving care. *Id.* at 1210. The Tenth Circuit held that plaintiff's heart attack satisfied § 1997e(e)'s physical injury requirement, even though (1) the defendants did not cause the plaintiff's heart attack, and (2) the plaintiff did not show that the delay in care caused his heart any additional damage. *Id.* at 1210 & nn.5-6. *McAdoo* and *Sealock* make clear that the district court's erroneous reasoning has no basis in precedent. Both emphatically eschewed the imposition of a causal connection between the predicate physical injury or sexual act and the purportedly unconstitutional conduct; this Court should follow suit.

Mr. Williams does not contend that *any* prior physical injury or sexual act, no matter how old or how unrelated to the claims at issue, would satisfy § 1997e(e)'s strictures. It may be that some physical injuries or sexual acts are simply too old or too irrelevant, or both, to qualify. But this case does not require this Court to engage in any difficult line-drawing; the rape here was both temporally close and inextricably intertwined with Mr. Williams's claims. Basic rules of time and space dictate that Mr. Williams's rape was not caused by the

defendants' unconstitutional *post*-rape conduct—that is, their failure to protect him from a substantial risk of serious additional harm and to provide him with necessary mental health treatment. But his rape is still inescapably part and parcel of those claims. Take his medical-care-denial claim: the whole reason Mr. Williams needed mental health care in the first place was to treat anxiety and post-traumatic stress *caused by his rape*. *See* Complaint, R. 1, PageID # 5-6, 14-15. His post-rape failure-to-protect claim similarly centers on his rape: *because* Mr. Williams reported his rape, which led prison officials to tell the prison gang that Mr. Williams was a "snitch," the gang repeatedly threatened Mr. Williams with death, held him at knifepoint, extorted him, stole from him, threw urine on him, and generally made his life a nightmare. *See id.* Because Mr. Williams's rape is central to both claims and because the statute does not impose a causal requirement, his rape serves as the requisite "sexual act" and dismissal on § 1997e(e) grounds was improper.

B. Section 1997e(e) requires only a physical injury, not a serious physical injury.

Although this Court need not necessarily reach the issue—given that Mr. Williams's rape serves as a qualifying "sexual act" for all of his claims and the Court can reverse on that basis alone—Mr. Williams also

satisfied § 1997e(e) another way: by making "a prior showing of physical injury." Recall that after prison officials told the prison gang that Mr. Williams had "snitched" on one of their members for raping him, the prison gang hit Mr. Williams in the head at least once (but potentially more than once), in addition to repeatedly holding him at knifepoint and throwing urine on him. Yet the district court held that any post-rape physical injury Mr. Williams suffered was *de minimis*, and thus did not qualify as a physical injury under the statute.

That was wrong for two reasons, set out below. First, the district court was wrong to impose a more-than-*de-minimis* injury requirement; it's atextual, at odds with basic principles of statutory interpretation, and this Court's endorsement of it does not survive the Supreme Court's decision in *Wilkins v. Gaddy*, 559 U.S. 34 (2010). Second, even if such a requirement applies, Mr. Williams adequately pled an injury that was more than *de minimis*, given the current state of medical research on the damaging effects of blows to the head (even those that do not cause symptoms or lead to a concussion), the liberal construction afforded *pro se* pleadings, and the early stage of these proceedings.

1. Basic principles of statutory interpretation foreclose imposing an atextual *de minimis* physical injury requirement.

The text, structure, and history of § 1997e(e) make clear that the provision requires only a showing of physical harm or damage to one's body, not an injury that is "more than *de minimis*."

The ordinary meaning of "physical injury" in 1996, when the PLRA was passed, included bodily injury of *any* severity. Black's Law Dictionary defined "physical injury" as: "[b]odily harm or hurt, excluding mental distress, fright, or emotional disturbance"—no particular level of severity necessary. BLACK'S LAW DICTIONARY 1147 (6th ed. 1990). "Injury," moreover, reads "[a]ny wrong or damage done to another, either in his person, rights, reputation, or property." *Id.* at 785.[4] Non-legal dictionaries are similarly inclusive. In one, for instance, "injury" is defined in relevant part as "an act that damages or hurts." *Injury*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 602 (10th ed. 1993).[5]

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[4] *See also Bodily Injuries*, BALLENTINE'S LAW DICTIONARY (William S. Anderson ed., 3d ed.) (encompasses "various degrees of harm").

[5] *See also Injury*, THE OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("Hurt or loss caused to or sustained by a person or thing."); *Injury*, THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (2d unabridged ed. 1987) ("[H]arm or damage that is done or sustained.").

The structure of the PLRA confirms that there is no "more-than-*de-minimis*" requirement. Where Congress wanted to require an injury of a particular degree of severity, it knew how to do so: in a separate portion of the PLRA, Congress required a showing of a "*serious* physical injury" before a litigant is excepted from the PLRA's "three strikes" rule. Public L. 104–134, April 26, 1996, 110 Stat 1321 §804(d) (codified as 28 U.S.C. § 1915(g)) (emphasis added); *see Jama v. Imm. & Customs Enf't*, 543 U.S. 335, 341 (2005) (courts should not infer a requirement outside a statute's text "when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest").

This argument is bolstered by Congress's 2013 amendment to § 1997e(e), which added "or the commission of a sexual act (as defined in section 2246 of Title 18)" to the end of the provision. Defining "sexual act" by reference to 18 U.S.C. § 2246 means that this definition is relatively narrow, excluding most non-penetrative contact. *Id.* If Congress had wanted to similarly narrow the "physical injury" language, it could have done so. Indeed, the very provision that Congress was looking at when it incorporated the "sexual act" definition—§ 2246—has a subsection defining the term "*serious* bodily injury." 18 U.S.C. § 2246(4)

(emphasis added). Congress could easily have incorporated this definition into § 1997e(e) when it was adding the reference to the definition of "sexual act," but chose not to. That evinces "a deliberate congressional choice"—one that should be respected. *Cent. Bank of Denver*, 511 U.S. at 184.

This understanding of the PLRA is consistent with the way the phrase "physical injury" is used in other settings, too. Under common-law tort principles, an "injury" is "the invasion of any legally protected interest." Restatement (Second) of Torts § 7(1). The term "injury" is specifically distinguished from the term "harm": An injury can occur with *no* showing of any harm, let alone more-than-*de-minimis* harm. *Id.* § 7 cmt. a. The Model Penal Code defines "bodily injury"—synonymous, per Black's Law Dictionary, with "physical injury," *see* BLACK'S LAW DICTIONARY 175, 1147—as "physical pain, illness or any impairment of physical condition," no particular severity required. Model Penal Code § 210.0. And the term "bodily injury" is defined in various federal statutes to include such minor injuries as "a cut, abrasion, bruise" or "any other injury to the body, no matter how temporary." *See, e.g.*, 18 U.S.C. §§ 831(g)(5); 1365(h)(4); 1515(a)(5); 1864(d)(2). In other settings, too,

drafters routinely distinguish between "physical injury"—read capaciously to include any bodily harm, however minor—and "serious" or "significant" physical injuries.[6]

2. This Court's prior indication that § 1997e(e) imposes a more-than-*de-minimis* requirement is incompatible with current Supreme Court precedent.

This Court's prior indication that § 1997e(e) requires more-than-*de-minimis* injury has been called into question by intervening Supreme Court precedent. To understand why, it's helpful to briefly retrace how this Court arrived here. In a series of unpublished decisions during the early 2000s, this Court considered the meaning of "physical injury" under § 1997e(e). *See, e.g.*, *Corsetti v. Tessmer*, 41 F. App'x 753, 755 (6th Cir. 2002). Acknowledging that the caselaw was still "developing," this Court relied on the Fifth Circuit's decision in *Siglar v. Hightower* to hold that "consistent with Eighth Amendment jurisprudence, the predicate injury

[6] *See, e.g.*, Model Penal Code § 210.0 (distinguishing between "bodily injury" and "serious bodily injury"); Tenn. Code Ann. § 39-11-106 (separately defining "bodily injury" and "serious bodily injury"); *cf. United States v. Singleton*, 917 F.2d 411, 413-14 (9th Cir. 1990) ("[I]t is clear that a 'significant' physical injury . . . must mean something more than 'physical injury' standing alone. Surely, not just any damage or hurt of a physical kind can satisfy the [Sentencing] Guidelines, for that would encompass every physical injury.").

need not be significant, but must be more than *de minimis*." *Id.* (citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)). This reliance on *Siglar*—and its importation of then-existing Eighth Amendment precedent into the statutory inquiry—was confirmed by the first published case to address the issue: *Flanory v. Bonn*, 604 F.3d 249, 254 (6th Cir. 2010). *Flanory* explained that this Court had "indicated" that a physical injury must be more than *de minimis* to satisfy § 1997e(e), and that this requirement originated with *Siglar*'s grafting of Eighth Amendment principles onto the statute. *Id.*

There's just one problem: *Siglar* has since been overruled—and *Flanory* along with it. Without reference to the text of §1997e(e), *Siglar* announced that "Eighth Amendment standards guide our analysis," therefore concluding that §1997e(e) requires an injury that is "more than *de minimus* [sic]." 112 F.3d at 193 (citing *Hudson v. McMillian,* 503 U.S. 1, 10 (1992)). That is, *Siglar* assumed that "Eighth Amendment standards" require an injury that is more than *de minimis* to be actionable.[7] But in *Wilkins*, the Supreme Court made clear that

[7] Whether *Siglar* was good law even at the time it was issued is questionable. For one, *Siglar* gave no explanation for why Congress

understanding was dead wrong. 559 U.S. at 35, 39. *Wilkins* held that an injury viewed as *de minimis* by the lower court could still support a claim of excessive force under the Eighth Amendment. 559 U.S. at 39. The Court did not mince words, describing the court of appeals' contrary conclusion as "not defensible" and a "strained reading of *Hudson*." *Id.* at 39. *Hudson*, *Wilkins* explained, did not "merely serve to lower the injury threshold for excessive force claims from 'significant' to 'non-*de minimis*'—whatever those ill-defined terms might mean." *Id.* Rather, *Hudson* "aimed to shift the 'core judicial inquiry' from the extent of the injury to the nature of the force." *Id.* (quoting *Hudson,* 503 U.S. at 7). Notably, the Fifth Circuit itself just acknowledged that *Wilkins* overruled *Siglar*'s interpretation of the Eighth Amendment. *Buchanan v. Harris*,

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would incorporate the Eighth Amendment test for "cruel and unusual punishment" into § 1997e(e) by using the phrase "physical injury." It made no attempt to tie that requirement to the text of the statute or to legislative history. Moreover, *Siglar* cited *Hudson* for the proposition that the Eighth Amendment did not recognize *de minimis* injuries, but the court in *Hudson* noted only that "*de minimis* uses of physical *force*" are not cognizable. 503 U.S. at 10 (emphasis added). In fact, *Hudson* made clear that "[t]he absence of serious injury is therefore relevant to the Eighth Amendment inquiry, but does not end it." *Id.* at 7. And Justice Blackmun's concurrence lauded the Court for "put[ting] to rest a seriously misguided view that pain inflicted by an excessive use of force is actionable under the Eighth Amendment only when coupled with 'significant injury.'" *Id.* at 13 (Blackmun, J., concurring).

No. 20-20408, 2021 WL 4514694, at *2 (5th Cir. Oct. 1, 2021), *motion to publish pending* (Oct. 11, 2021) (indicating that *Siglar* is irreconcilable with *Wilkins*, but deciding case on other grounds).

In light of *Wilkins*, this Court can and should overrule *Flanory*. A three-judge panel of this Court may overrule prior circuit precedent due to "an intervening Supreme Court decision" or "in the unusual situation where binding circuit precedent overlooked earlier Supreme Court authority." *Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 720-21 (6th Cir. 2016). This is one of the latter unusual situations. *Wilkins* was actually decided several weeks before *Flanory* was submitted and several months before *Flanory*'s opinion issued. Still, it's far from surprising that the *Flanory* panel did not analyze or even mention *Wilkins*: in addition to the close timing, the plaintiff in *Flanory* appeared *pro se* and filed his opening brief 10 months before *Wilkins*, and because the case was dismissed at screening, there was no appearance by defendants. *Flanory* thus did not have any counseled briefing at all, let alone briefing discussing the impact of *Wilkins* on the *de minimis* issue.

In this Court, conflicting Supreme Court precedent "need not be precisely on point" to form the basis of a three-judge panel's overruling of

a prior panel decision; what matters is whether "the legal reasoning is directly applicable." *Ne. Ohio Coal. for the Homeless*, 831 F.3d at 720-21 (citing cases). *Wilkins*, of course, was not interpreting the meaning of "physical injury" for § 1997e(e) purposes. But the sole rationale for this Court's adoption of a more-than-*de-minimis* physical injury requirement under § 1997e(e) was "consisten[cy] with Eighth Amendment jurisprudence." *Corsetti*, 41 F. App'x at 755 (citing *Siglar*, 112 F.3d at 193); *Adams v. Rockafellow*, 66 F. App'x 584, 586 (6th Cir. 2003) (same); *Flanory*, 604 F.3d at 254 (citing reliance on *Siglar* in *Adams*, *Corsetti*, and others in same line of cases). And as explained, *Siglar*—effectively the sole authority on which this Court relied[8]—grounded its own adoption of a more-than-*de-minimis* requirement exclusively in its now-overruled understanding of Eighth Amendment principles. 112 F.3d at 193; *see supra* at 28-29. It follows that the legal reasoning of *Wilkins* is "directly applicable"—and directly contrary—to *Flanory*'s endorsement of a more-than-*de-minimis* requirement. This Court should take this opportunity to clarify that the PLRA contains no such requirement.

[8] The other case cited by this Court for the adoption of a more-than-*de-minimis* requirement, *Luong v. Hatt*, 979 F. Supp. 481, 485 (N.D. Tex. 1997), itself relied on *Siglar*.

C. Even if a more-than-*de-minimis* requirement exists, Mr. Williams's post-rape injury was not *de minimis*.

Even *if* a more-than-*de-minimis* physical injury requirement applies, and even *if* Mr. Williams's rape was not a qualifying "sexual act," the district court erred in yet another way by dismissing Mr. Williams's claims on § 1997e(e) grounds: failing to recognize that being hit in the head is not *de minimis*. The district court acknowledged that members of the prison gang had subjected Mr. Williams to at least one "blow to the head," but found that insufficient, because Mr. Williams did not allege that the head trauma "caused any actual injury." Order, R. 7, PageID # 13. That was error.

As a medical matter, it is now well-established that hits to the head can cause serious, lasting brain damage—even if those hits are "subconcussive," meaning they do not result in a concussion, and even if the victims do not experience near-term symptoms afterward.[9] One

[9] *See, e.g.*, Boston University School of Medicine, *Study: Hits, Not Concussions, Cause CTE* (Jan. 18, 2018), https://www.bumc.bu.edu/busm/2018/01/18/study-hits-not-concussions-cause-cte/ ("strong evidence" that "subconcussive impacts are not only dangerous but also causally linked to CTE [chronic traumatic encephalopathy] . . . to prevent [CTE], you have to prevent head impact—it's hits to the head that cause CTE"); Brian Johnson, et al., *Effects of Subconcussive Head Trauma on*

expert in this field has explained that "[w]e now know that a seemingly light blow to the head can cause a more significant brain injury than a tremendously hard hit."[10] Given modern medical understanding of the significant brain damage caused by hits to the head, the district court's conclusion that a "blow to the head" is not *itself* a more-than-*de-minimis* injury—that Mr. Williams needed to allege some sort of additional injury above and beyond the head trauma—was inappropriate.[11] This is all the more true given the leniency granted to pro se plaintiffs and the early stage of these proceedings.

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the Default Mode Network of the Brain, 31 J. Neurotrauma 1907 (2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4238241/ (even short-term exposure to subconcussive head trauma can alter functional connectivity patterns in the brain); *Increased Brain Injury Markers in Response to Asymptomatic High-Accelerated Head Impacts*, ScienceDaily (July 3, 2018), https://www.sciencedaily.com/releases/2018/07/180703084136.htm (study demonstrating elevated biomarkers of traumatic brain injury after subconcussive head hits, despite subjects being asymptomatic afterward).

[10] Amy Geiszler-Jones, *Heads Up: Subconcussive Impacts Can Be More Dangerous Than Concussions*, Greater Kansas MD News (Aug. 29, 2018), https://greaterkansas.mdnews.com/heads-subconcussive-impacts-can-be-more-dangerous-concussions.

[11] This is yet another reason why imposing a "more-than-*de-minimis*" requirement is a mistake: judges are not medical professionals, so may lack the knowledge required to distinguish *de minimis* injuries from significant ones.

II. Because § 1997e(e) does not apply to some of Mr. Williams's requested relief, the district court erred in dismissing Mr. Williams's case on § 1997e(e) grounds.

A. Section 1997e(e) should not apply to compensatory damages for Eighth Amendment constitutional injuries.

All the above arguments presuppose that § 1997e(e) applies to the Eighth Amendment constitutional injuries alleged here. But as this Court recently explained, there is a "strong argument" it does not. *Small*, 963 F.3d at 543-44. Whether § 1997e(e) bars compensatory damages for *constitutional* injury, as separate from mental and emotional injury, is a question that has split the circuits, with this Court's decision in *King v. Zamaria* one of the leading cases answering that question in the negative. *See* 788 F.3d 207, 213 (6th Cir. 2015). Although *King* involved the First Amendment, recent decisions from this Court have suggested—without definitively deciding, due to the absence of adversarial briefing—that its reasoning should apply with equal force to the Eighth Amendment. *See Small,* 963 F.3d at 543-44; *Lucas v. Chalk*, 785 F. App'x 288, 292 (6th Cir. 2019). This Court should take this opportunity to confirm what it has already indicated twice: that *King* extends to violations of the Eighth Amendment as well as the First.

As noted, *King* answered whether § 1997e(e) applies to compensatory damages for violations of the First Amendment. 788 F.3d at 212-13. Following ordinary principles of statutory interpretation, *King* held that it does not. *Id.* This Court began "with the plain meaning of the statutory language," adhering to the interpretative maxim that "[e]very word in the statute is presumed to have meaning," and thus courts "must give effect to all the words to avoid an interpretation which would render words superfluous or redundant." *Id.* at 212. *King* observed that § 1997e(e) "says nothing about claims brought to redress *constitutional injuries*, which are distinct from mental or emotional injuries." *Id.* at 213 (emphasis added). The problem with "grafting a physical-injury requirement onto claims that allege First Amendment violations as the injury" is that it would render superfluous the phrase "for mental or emotional injury." *Id.* So, *King* concluded, "the plain language of the statute does not bar claims for constitutional injury that do not also involve physical injury." *Id.*

King left unresolved the question of whether § 1997e(e) is inapplicable to *all* constitutional injuries, or only First Amendment ones. But as the above quotes demonstrate, *King* generally did not limit its

language to First Amendment constitutional injuries; its language swept far more broadly. *See id.* And in two recent cases, this Court has indicated that *King*'s reasoning applies to the Eighth Amendment as well as the First. *Lucas v. Chalk* hinted at that outcome: there, a bisexual prisoner who had been raped while incarcerated alleged Eighth and Fourteenth Amendment violations stemming from a mental health coordinator's refusal to treat him for post-rape PTSD on the basis of his sexual orientation. 785 F. App'x at 289-91. This Court vacated the district court's dismissal with prejudice, which was based in part on § 1997e(e). *Id.* at 292. Because of the lack of adversarial briefing, *Lucas* declined to "resolve the underlying, unsettled question of statutory interpretation" around § 1997e(e)'s application. *Id.* Significantly, however, this Court cited *King* in noting that on remand, the plaintiff might seek "relief not prohibited by the PLRA," including "compensatory . . . damages for constitutional violations"—there, violations of the Eighth and Fourteenth Amendments. *Id.*

A year later, this Court made explicit what *Lucas* left implicit: that *King*'s reasoning "would seem to apply" to Eighth Amendment violations. *Small*, 963 F.3d at 544. Under *King*, *Small* explained, there is a "strong

argument" that § 1997e(e) does not apply to compensatory damages for Eighth Amendment constitutional injuries—there, a guard repeatedly threatening to kill the plaintiff and brandishing a knife at him. *Id.* at 540, 543. After all, *King*'s "same logic" appears to apply to Eighth Amendment claims just as well as First Amendment ones. *Id.* at 543-44. But because there was again no adversarial briefing before this Court, *Small* declined to definitively answer the question, as it had other reasons for vacating the district court's dismissal. *Id.* at 544.

This case offers a chance for this Court to confirm what it indicated in *Small* and *Lucas*: the most logical reading of *King* is that § 1997e(e) does not apply to compensatory damages sought for Eighth Amendment constitutional injuries, just as it does not apply to compensatory damages for First Amendment constitutional injuries.

B. Mr. Williams requested injunctive relief in addition to damages, so dismissal on § 1997e(e) grounds was improper.

The district court also erred by dismissing Mr. Williams's claims under § 1997e(e) because, in addition to damages, Mr. Williams requested injunctive relief—a form of relief not subject to § 1997e(e). As previously noted, § 1997e(e) *only* applies to requests for compensatory

damages; it does not affect requests for other types of relief, including injunctions. *Small*, 963 F.3d at 543. The district court's way around this clear principle was to assert that Mr. Williams did not adequately allege eligibility for his requested injunctive relief: transfer to another prison. Order, R. 7, PageID # 13-14. Relying only on a single district court case, the district court held that transfer is a "rare and extreme" remedy that federal courts can only grant where a prisoner's life "is in imminent danger." *Id.* (quoting *Neal v. Woosley*, No. 4:20-CV-P167-JHM, 2020 WL 7327313, at *4 (W.D. Ky. Dec. 11, 2020)). And while the district court acknowledged that Mr. Williams alleged fearing for his life, it said that he had not established that he was "in *such* imminent or grave danger" that it would have the power to order his transfer. *Id.* (emphasis added). Thus, in the eyes of the district court, the request for injunctive relief did not save Mr. Williams's claims from being dismissed on § 1997e(e) grounds. *Id.* at PageID # 14. For multiple reasons, that was error.

For one, the district court effectively imposed additional pleading requirements that have no grounding in either the PLRA or the Federal Rules of Civil Procedure. But the Supreme Court has specifically warned against doing just that: where Congress has not imposed heightened

pleading standards or additional procedural obstacles, courts are not free to do so themselves. In *Jones v. Bock*, for example, the Supreme Court rejected this Court's imposition of three judicially-crafted procedural rules in prisoner cases. 549 U.S. 199, 202-06 (2007). Because the rules were at odds with the typical practice under the Federal Rules and had no basis in the PLRA itself, they could not be imposed "by judicial interpretation." *Id.* at 212-14, 219, 223. *Jones* reiterated that "courts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns." *Id.* at 212; *see also Leatherman v. Tarrant Cty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 167-68 (2007) (imposition of judicially-crafted heightened pleading standard "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation").

The Supreme Court has made clear, then, that courts are not free to impose their own heightened pleading requirements; absent a heightened standard imposed by statute or the Federal Rules, the usual practice under the Federal Rules applies. *See Jones*, 549 U.S. at 212; *Leatherman*, 507 U.S. at 168. Consistent with this principle, this Court has held that screening-stage dismissals for failure to state a claim are

analyzed under the same standard as Rule 12(b)(6) dismissals. *See Hill v. Lapin*, 630 F.3d 468, 470-71 (6th Cir. 2010). That, in turn, means that assessing a complaint's sufficiency at this stage should be done in reference to Rule 8, which sets out general pleading requirements. *See Binno v. Am. Bar Ass'n*, 826 F.3d 338, 345-46 (6th Cir. 2016); Fed. R. Civ. P. 8. As far as remedies go, all Rule 8(a)(3) requires is some "demand for the relief sought." To satisfy this barebones requirement, "any concise statement identifying the remedies and the parties against whom relief is sought will be sufficient." 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1255 (4th ed. 2021). In fact, as long as some non-frivolous demand is made against defendants, the demand for relief should not factor into an assessment of the sufficiency of the pleadings. *See Pension Ben. Guar. Corp. v. E. Dayton Tool & Die Co.*, 14 F.3d 1122, 1127 (6th Cir. 1994); *see also Dingxi Longhai Dairy. Ltd. v. Beckwood Tech. Grp., LLC*, 635 F.3d 1106, 1108-09 (8th Cir. 2011). So under the normal practice of the Federal Rules, plaintiffs need not plead facts convincing a court that the specific relief they request is advisable, practicable, or even definitely available, *see id.*—and that's on top of the

general rule requiring courts to liberally construe *pro se* complaints, *Williams*, 631 F.3d at 383.

Here, the district court went far beyond the dictates of Rule 8(a)(3), imposing a heightened pleading requirement where a prisoner requests transfer as a remedy. After deciding—without basis, *see infra* at 43-45—that transfer is only an available remedy if a plaintiff's life is in "imminent or grave danger," it required Mr. Williams to have pled facts establishing precisely that. *See* Order, R. 7, PageID # 13. Indeed, the district court's judicially-imposed standard was *so* demanding that Mr. Williams's allegations that he feared for his life—and justifiably so—were *still* not enough to meet it. Thus, the district court decided, Mr. Williams had not stated a claim under the Eighth Amendment. *Id.* at PageID #14. But under the Federal Rules, Mr. Williams was not required to plead facts convincing the court that transfer would ultimately be appropriate in order to state a claim. All he needed to do was to demand relief, a bar he indisputably met. By requiring more—*much* more—the district court fashioned its own pleading requirements inconsistent with the Rules and the PLRA, running afoul of Supreme Court precedent in the process.

The district court's impermissible departure from the usual practice of the Federal Rules is reason enough to reverse. But even *if* the appropriateness of transfer as a form of injunctive relief were relevant at this stage, the district court's "grave and imminent danger" standard is divorced from statute and precedent. The district court relied on just one recent district court decision as authority. Order, R. 7, PageID # 13-14 (quoting *Neal*, 2020 WL 7327313, at *4). That decision, in turn, cites two lines of cases—neither of which hold anything akin to what the court here claimed. *See Neal*, 2020 WL 7327313, at *4. One is a series of decisions holding that there is no constitutional right to be incarcerated at a particular institution. *See id.* (citing *Montanye v. Haymes*, 427 U.S. 236 (1976), and *Beard v. Livesay*, 798 F.2d 874, 876 (6th Cir. 1986)). But that principle is simply not relevant here. Those cases involved plaintiffs who challenged, on due process grounds, decisions by prison officials to involuntarily transfer them to other prisons. Here, in contrast, Mr. Williams desperately sought *to* be transferred. And Mr. Williams did not allege that he has a due process right to be incarcerated at any particular prison; instead, he sought transfer as a *remedy* for violation of his Eighth Amendment rights.

The other line of cases cited by *Neal* do not support the district court's imposition of an "imminent and grave danger" standard, either. *See Neal*, 2020 WL 7327313, at *4 (citing *Walker v. Lockhart*, 713 F.2d 1378, 1383 (8th Cir. 1983), and *Streeter v. Hopper*, 618 F.2d 1178, 1182 (5th Cir. 1980)). Both cases ordered transfers where plaintiffs' lives and safety were in danger; neither said anything about requiring an "imminent or grave" threat, nor did they warn that transfer should be a "rare and extreme" remedy. *See Walker*, 713 F.2d at 1382-83; *Streeter*, 618 F.2d at 1182-83.

Compounding the district court's error is that it displaced the PLRA's statutory standard for granting prospective relief. Under the PLRA, prospective relief should "extend no further than necessary to correct the violation" at issue and be "narrowly drawn" and "the least intrusive means necessary" to correct the violation, with "substantial weight" given to "any adverse impact on public safety or the operation of a criminal justice system caused by the relief." 18 U.S.C. § 3626(a)(1)(A). Congress itself, then, has outlined a standard that courts should use in deciding what sort of prospective relief to award in prison litigation. Nowhere in the PLRA did Congress single out transfer as a particularly

extreme or disfavored remedy, nor did it suggest that this framework should not apply to requests for transfers. *See id.* Indeed, other district courts considering constitutional claims where plaintiffs requested transfer as a form of injunctive relief have assessed these claims under § 3626(a)(1)(A). *See, e.g.*, *Rezaq v. Nalley*, No. 07-cv-02483-LTB-KLM, 2010 WL 5157317, at *4 n.4 (D. Colo. Aug. 17, 2010).

In short, the district court here impermissibly displaced the Federal Rules and the PLRA by imposing its own heightened pleading requirements *and* its own standard for when transfer is available as a remedy; that error cannot stand.

III. Mr. Williams plausibly alleged that prison officials failed to protect him, both before and after his rape.

The Supreme Court has long held that one of the duties incumbent on prison officials is the obligation to "protect prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). When prison officials do not fulfill this obligation, incarcerated plaintiffs can make out a failure-to-protect claim under the Eighth Amendment. These claims have both an objective and subjective prong. The objective prong requires a plaintiff to demonstrate that "he is incarcerated under conditions posing a substantial risk of serious harm."

Id. at 834. The subjective prong asks whether the defendants were deliberately indifferent to this substantial risk. *Id.* at 834-35. Prison officials act with deliberate indifference when they know of and disregard an excessive risk to prisoner health or safety; under this standard, officials must both have facts at their disposal to draw an inference of a substantial risk of harm, and actually draw that inference. *Id.* at 837.

Here, Mr. Williams adequately alleged that prison officials failed to protect him both before and after his rape; these claims should not have been dismissed.

A. Mr. Williams adequately alleged a failure-to-protect claim based on his rape.

Despite the district court's conclusion otherwise, Mr. Williams stated a straightforward failure-to-protect claim relating to his rape. To recap: After the prison gang began threatening and targeting Mr. Williams, he repeatedly begged the J-B unit counselor for help keeping him safe from the gang in the several weeks leading up to his rape by one of the members of the gang. Complaint, R. 1, PageID # 5, 13. But she refused, telling him that he would not be receiving any assistance, that she was too busy, and that she did not want to hear about his fears, eventually ordering him to "go back to [his] f***ing cell now!" as he

pleaded for protection. *Id.* These allegations should have been enough to establish, at least at this early stage, the subjective component of a failure-to-protect claim against the J-B unit counselor. Yet the district court did not even acknowledge their existence.

The district court's analysis on this issue is puzzling. The court began by pointing out that Mr. Williams did not "explain why his assailant and other gang members believed he was responsible for the loss of their cell phone" in the leadup to his rape. Order, R. 7, PageID # 12. True enough, but that has no bearing on whether he stated a failure-to-protect claim. Hypothesizing for a moment that Mr. Williams was, in fact, responsible for the confiscation of the gang's phone: so what? It doesn't matter *why* Mr. Williams was actually being targeted by the gang—what matters is that Mr. Williams conveyed his fears to prison officials, who acted with deliberate indifference in response.

After that analytical detour, the district court continued by saying that Mr. Williams did not "allege that any of the named Defendants actually knew of, and yet disregarded, a significant risk the attack would occur." *Id.* That conclusion rests on both factual and legal errors.

Assuming the district court meant that Mr. Williams's counselor needed to have known that this *specific* attack by this *particular* rapist would occur, that was error. *See* Order, R. 7, PageID # 12 (faulting Mr. Williams for not alleging that any named defendants "actually knew of, and yet disregarded, a significant risk *the* attack would occur") (emphasis added). *Farmer* rejected such a requirement. 511 U.S. at 843, 849 n.10 (explaining that to the extent the district court there believed advance notification of "a substantial risk of assault posed by a particular fellow prisoner" was required, it erred). Establishing the subjective prong does not require a defendant to have known the specific *form* Mr. Williams's assault would take (that he would be raped, as opposed to, say, beaten or stabbed), or the specific *member* of the prison gang who would assault him (as opposed to any other members of that gang, alone or in concert)—only that Mr. Williams faced a substantial risk of serious harm from the prison gang. *See id.*

And to the extent the district court believed Mr. Williams had not sufficiently named the J-B unit counselor as a defendant, that too was error. In a footnote, the district court observed that the J-B unit counselor and "G-Unit Guards" may have been listed as defendants in

Mr. Williams's complaint, but that service of process cannot be made on unidentified parties and that the filing of a complaint against unknown defendants does not toll the running of the statute of limitations. *See* Order, R. 7, PageID # 6 n.3.

But as this Court's sister circuits have held, "so long as the plaintiff provides an adequate description of some kind [] sufficient to identify the person involved so process eventually can be served," a plaintiff may sue an "unnamed" defendant. *Roper v. Grayson*, 81 F.3d 124, 126 (10th Cir. 1996); *see also, e.g.*, *Dean v. Barber*, 951 F.2d 1210, 1216 (11th Cir. 1992) (naming "Chief Deputy of the Jefferson County Jail" was "sufficiently clear to allow service of process" on unnamed defendant whose actual title was "Chief Correctional Officer"); *Est. of Rosenberg v. Crandell*, 56 F.3d 35, 37 (8th Cir. 1995) ("[A]n action may proceed against a party whose name is unknown if the complaint makes allegations specific enough to permit the identity of the party to be ascertained after reasonable discovery."); *Martinez-Rivera v. Sanchez Ramos*, 498 F.3d 3, 8 (1st Cir. 2007) (bringing suit against unnamed party generally acceptable if there is a "reasonable likelihood that discovery will provide that information"). Here, Mr. Williams's complaint included the J-B unit

counselor's job title, her place of employment, the specific unit within the prison she was assigned to, the month during which the allegations took place, and her gender. Even if all of that information proved insufficient to serve her at the time the complaint was filed—which is doubtful—it certainly provides description adequate enough to learn her name with even very limited discovery. And in any event, the district court was not permitted to—as appears was the case—simply ignore any allegations made against a defendant who is only partially identified.

B. Mr. Williams also sufficiently stated a failure-to-protect claim relating to what he endured after he was raped.

In addition to adequately alleging a failure-to-protect claim based on his rape, Mr. Williams also stated a claim related to what happened to him *after* he was raped. While the district court ultimately—and incorrectly—dismissed this claim on § 1997e(e) grounds, it also made several errors in analyzing the substance of the claim.

1. The district court failed to acknowledge the well-established principle that an ongoing risk of future harm can state a failure-to-protect claim.

In evaluating the objective prong of Mr. Williams's post-rape failure-to-protect claim, the district court correctly acknowledged that sufficiently serious harms had already befallen him, such as repeatedly

being held at knifepoint by the prison gang. *See* Order, R. 7, PageID # 12-13. But the district court appeared to ignore that a plaintiff need only demonstrate a *future risk* of substantial harm in order to make out a claim—the substantial harm need not have actually come to pass prior to filing suit. "The question under the Eighth Amendment is whether prison officials . . . exposed a prisoner to a sufficiently substantial 'risk of serious damage to his *future* health.'" *Farmer*, 511 U.S. at 843 (emphasis added). *Farmer* makes clear that the failure-to-protect inquiry is not always concerned with the harm that may or may not ultimately befall a plaintiff, but instead focuses on the nature of the risk that prison officials subject a plaintiff to in the meantime. *See also Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) ("That the Eighth Amendment protects against future harm to inmates is not a novel proposition."). This Court and its sister circuits have acknowledged the availability of Eighth Amendment claims for ongoing risks, a conclusion that flows inevitably from Supreme Court precedent. *See Hadix v. Johnson*, 367 F.3d 513, 525 (6th Cir. 2004) ("[A] remedy for unsafe conditions need not await a tragic event." (internal quotation marks omitted)); *Thompson v. Virginia*, 878 F.3d 89, 107 (4th Cir. 2017); *Thomas v. Ponder,* 611 F.3d 1144, 1150 n.5 (9th Cir.

2010). Thus, in evaluating the objective prong of a failure-to-protect claim, the focus is not solely on what harm *actually* came to pass, but also on whether a substantial risk of serious *future* harm existed.

Here, the crux of Mr. Williams's complaint is not just that the defendants failed to intervene and protect him from assaults that already happened, but that they continued to do nothing in the face of an ongoing, serious threat to his life and safety. For example, one particularly troubling allegation is that after Mr. Williams was violently assaulted and requested protection from the prison gang who tormented him, raped him, and threatened his life, prison officials *still* allowed his cell to be unlocked, facilitating his extortion by the gang at knifepoint and creating opportunities for future assaults. Complaint, R. 1, PageID # 13-15. This not only establishes a failure to protect Mr. Williams from those particular encounters, but also a persistent failure to address a real threat of further, potentially more severe harm in the future. *See id.* at PageID # 14-15. Yet the district court emphasized that Mr. Williams did not allege "he suffered any further sexual assault or any other physical injury that was more than *de minimis* as a result of the threats and other mistreatment by inmates in the protective custody unit." *Id.* at PageID

13. As explained above, that analysis was a misapplication of the PLRA's physical injury requirement. *See supra* at 16-34. But it also inappropriately glossed over the significance of the substantial risk of serious *future* harm Mr. Williams faced, which is constitutionally cognizable in and of itself.

2. The district court ignored that defendants not only failed to protect Mr. Williams from a substantial risk of serious harm, but actually took steps to *increase* his risk of harm.

The district court's cursory analysis also failed to adequately address the ways in which the defendants' actions did not merely facilitate the risk Mr. Williams faced at the hands of other prisoners, but in fact *heightened* that risk. For example, courts have recognized that where prison officials label an incarcerated plaintiff a "snitch," they put that plaintiff in danger of future attacks by fellow prisoners. *See, e.g.*, *Benefield v. McDowall*, 241 F.3d 1267, 1270-72 (10th Cir. 2001); *Irving v. Dormire*, 519 F.3d 441, 451 (8th Cir. 2008). Given this well-known aspect of prison dynamics, labeling someone a "snitch" can constitute deliberate indifference. *Benefield*, 241 F.3d at 1270-72; *Irving*, 519 F.3d at 451. This Court, too, has recognized the adverse impact of being labeled a "snitch," and the extent to which prison officials likely understand the

significance of such a label. *See Comstock v. McCrary*, 273 F.3d 693, 699 n.2, 705-06 (6th Cir. 2001).

Here, defendants told members of the prison gang that Mr. Williams had "snitched" on the gang member who had raped him, exacerbating the ongoing danger Mr. Williams faced. Complaint, R. 1, PageID # 5, 13. But the district court erroneously failed to mention those allegations, despite their importance to the deliberate-indifference inquiry. The court did at least concede that Sergeant Mann having loudly admonished Mr. Williams for "snitching" in front of other prisoners likely showed deliberate indifference. Order, R. 7, PageID # 13. But no analysis of his failure-to-protect claim would be complete without considering the defendants' entire course of conduct, not just the one incident by Sergeant Mann.

Likewise, just as prison norms may put an individual labeled a "snitch" in obvious danger, prevailing norms often make those who are convicted of sex offenses a target for attacks. Thus, when prison officials make these charges known to the greater population, they increase the risk of that prisoner being attacked and may violate the Eighth Amendment. *See, e.g.*, *Moore v. Mann*, 823 F. App'x 92, 96 (3d Cir. 2020);

Miller v. Kastelic, 601 F. App'x 660, 663 (10th Cir. 2015); *see also Renchenski v. Williams*, 622 F.3d 315, 326 (3d Cir. 2010) (explaining, in other context, stigma of being labeled sex offender).

Here, the complaint described an incredible—in the literal sense of that word—coincidence: the day after Sergeant Mann loudly swore at Mr. Williams and publicly exposed him as having "snitched" on the prison gang for threatening him, a printout of Mr. Williams's sex crime conviction mysteriously appeared on the table in the unit's common area for all to see. Complaint, R. 1, PageID # 14. No need for Sherlock Holmes; common sense tells us that a plausible explanation—indeed, arguably the *most* plausible explanation—is that Sergeant Mann continued her campaign of deliberate indifference to Mr. Williams's safety by leaving those records where other prisoners would see them. Of course, that doesn't mean Mr. Williams will ultimately be able to prove that Sergeant Mann was responsible; it's simply a sufficiently plausible inference at this stage.

3. The district court erred in characterizing Mr. Williams's claims against defendants Hall, Malone, and Jones as alleging *respondeat superior* liability.

Government officials cannot be held liable for the constitutional violations of their subordinates. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). Rather, a government official is only liable if, through their own actions, they violate the constitution. *Id.* But this does not mean that officials with supervisory roles are shielded from § 1983 liability for their *own* actions—or inactions. Indeed, as this Court has recognized, where supervisory officials have actual knowledge of a problem and fail to follow through on their own duties to address it, plaintiffs seeking to hold them responsible do so based on that official's personal liability. *See Hill v. Marshall,* 962 F.2d 1209, 1213 (6th Cir.1992); *Taylor v. Michigan Dep't of Corr.*, 69 F.3d 76, 81-82 (6th Cir. 1995). That is, where supervisory officials fail to do their own jobs, and constitutional violations result, liability attaches.

Here, Mr. Williams does not seek to hold these defendants liable for constitutional violations committed by their employees. Instead, Mr. Williams alleges that each of these officials had personal knowledge of Mr. Williams's situation, that it was within each of the defendants' job

descriptions to help him, and that, at best, each defendant ignored this personal duty to protect Mr. Williams from a substantial risk of harm. *See* Complaint, R. 1, PageID # 5-6, 13-15. Mr. Williams wrote to Warden Hall three times describing the risk he faced and the threats he'd received from other prisoners, and begged to be transferred. *Id.* at PageID # 14. Mr. Williams also wrote to both Case Manager Malone and Unit Manager Jones asking for help, again implying personal knowledge on both of their parts. *Id.*

While the district court highlighted that supervisors generally cannot be held liable even when they know of unconstitutional actions by their subordinates and fail to act, Order, R. 7, PageID # 10, that's not the issue here. Mr. Williams does not contend that these defendants knew of unconstitutional actions by their subordinates, but rather that they knew—because he told them—of an intolerable risk to his personal safety. Complaint, R. 1, PageID # 14. And although each defendant was plausibly positioned, as part of his or her job description, to either provide more protection to Mr. Williams within HCCF or to put procedures in motion to transfer Mr. Williams should protection be deemed impossible, none of these defendants did anything of the sort. Instead, they all

ignored his pleas. *See id.* Mr. Williams's complaint seeks to hold each defendant liable for this *personal* failure to protect him, alleging that they, individually, violated the constitution. Thus, despite the district court's conclusion otherwise, Mr. Williams plausibly alleged liability for each defendant beyond *respondeat superior*.

IV. Mr. Williams sufficiently stated an Eighth Amendment claim for denial of mental health care against defendant Malone.

Deliberate indifference to a prisoner's serious medical needs constitutes the "unnecessary and wanton infliction of pain" in violation of the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). That deliberate indifference may manifest as "prison guards [] intentionally denying or delaying access to medical care." *Id.* at 104-05. This Court distinguishes between claims alleging a "*complete* denial of medical care" and those alleging "inadequate medical treatment." *Alspaugh v. McConnell*, 643 F.3d 162, 169 (6th Cir. 2011) (quoting *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976)) (emphasis added). Although this Court is "generally reluctant to second guess medical judgments," no such reluctance applies to claims alleging a complete denial of care, like the one here. *See id.*

As with failure-to-protect claims, denial of medical care claims have both objective and subjective components. *Blackmore v. Kalamazoo Cty.*, 390 F.3d 890, 895 (6th Cir. 2004). The objective component asks whether the plaintiff had a "'sufficiently serious' medical need." *Id.* The subjective component turns on whether the defendant had "a sufficiently culpable state of mind in denying medical care"; a defendant must have had "[k]nowledge of the asserted needs or of circumstances clearly indicating the existence of such needs." *Id.* at 896.

Here, the district court indicated agreement that Mr. Williams's mental health concerns satisfied the objective component—that Mr. Williams had a "serious medical need." *See* Order, R. 7, PageID # 15. Either way, this Court has long held that serious medical needs include mental health or psychological needs. *Clark-Murphy v. Foreback*, 439 F.3d 280, 292 (6th Cir. 2006) (citing cases). And as this Court has explained, it "do[es] not doubt that the psychological trauma from being raped [] in prison could give rise to a 'substantial risk of serious harm' such that a deliberate refusal to treat a victim could violate the Eighth Amendment." *Lucas*, 785 F. App'x at 291-92. Post-rape psychological trauma is the precise serious medical need at issue here: Mr. Williams

alleged that being raped caused him to suffer anxiety, constant flashbacks, frequent shaking and crying, ever-present paranoia, and persistent insomnia. Complaint, R. 1, PageID # 6, 14-15.

As to the subjective component, the district court acknowledged that Mr. Williams had made multiple requests for mental health services, and that those requests were denied. *See* Order, R. 7, at PageID # 15. Under this Court's precedent, refusing those requests for care can constitute deliberate indifference. *See Lucas*, 785 F. App'x at 291-92; *Comstock*, 273 F.3d at 702 ("[W]e have long held that prison officials who have been alerted to a prisoner's serious medical needs are under an obligation to offer medical care to such a prisoner."); *Danese v. Asman*, 875 F.2d 1239, 1244 (6th Cir. 1989) ("If a prisoner asks for and needs medical care, it must be supplied."). The district court did not appear to doubt that, instead dismissing the claim because it found Mr. Williams had not specifically identified *which* prison officials had denied his requests for care and were therefore deliberately indifferent. Order, R. 7, at PageID # 15.

It's true that Mr. Williams did not identify *every* prison official who denied his requests for mental health care. But he identified at least one

named defendant who did: Case Manager Malone. *See* Complaint, R. 1, PageID # 14 ("I ask for Guards *and Case Manager* [to] call mental health so I can talk to them—they tell me know [sic][,] they [are] not going to call mental health.") (emphasis added). Read in context, especially in light of the liberal construction afforded *pro se* pleadings, it is more than clear that the "Case Manager" referred to in that sentence is the one and only case manager named as a defendant in this case: Case Manager Malone. This common-sense reading is bolstered by the fact that elsewhere in the complaint, Mr. Williams similarly dropped the defendants' last names at times, instead using only their titles to refer to them. *See, e.g.*, *id.* at PageID # 6 ("Guards & Warden & Unit Manger & Sgt. Mann & Case Manager know inmates said they were going to kill me"); *id.* at PageID # 5 ("I asked Warden to get me moved to another unit"); *id.* ("Case Manager & Unit Manager ignore[] me and refuse[] to help"). In fact, it appears that of all the named defendants, only Sergeant Mann was consistently referred to throughout the complaint by both her title and her last name—perhaps because there were multiple sergeants who worked on Mr. Williams's unit, but only one case manager, unit counselor, or unit manager (certainly, there was only one warden). The

district court thus erred in finding that Mr. Williams had failed to state a denial of medical care claim against Case Manager Malone.

V. The district court lacked authority to impose a "strike" under § 1915(g).

When the district court dismissed Mr. Williams's complaint, it purported to impose a "strike" upon Mr. Williams under the PLRA's "three strikes" rule, set out in 28 U.S.C. § 1915(g). *See* Order Dismissing Case, R. 8, PageID # 21-22. Even putting aside the erroneous dismissal of Mr. Williams's claims on the merits, the district court erred in this premature "strike" assessment. As this Court held recently in *Simons*, 996 F.3d at 352, "a court that dismisses a prisoner's lawsuit" may not "bind a later court with its strike determination." Section 1915(g) vests the authority to adjudicate strikes to a later court, which is asked to determine "whether the prisoner 'on 3 or more prior occasions' has brought an action or appeal that was 'dismissed on the grounds that [it was] frivolous, malicious, or fail[ed] to state a claim,'" and therefore is ineligible to proceed IFP, unless he is in "imminent danger of serious physical injury." *Id.* (quoting 28 U.S.C. § 1915(g)). In purporting to assess a strike and bind that later court, the district court erred.

CONCLUSION

This Court should reverse and remand for further proceedings.

Dated: October 22, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)

1. This Brief complies with type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure and Circuit Rule 32(b) because, according to the word count function of Microsoft Word 2019, the Brief contains 12,939 words excluding the parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure.

2. This Brief complies with the typeface and type style requirements of Rule 32(a)(5) and (6) of the Federal Rules of Appellate Procedure and Circuit Rule 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point Century Schoolbook font for the main text and 14-point Century Schoolbook font for footnotes.

Dated: October 22, 2021 */s/ Elizabeth A. Bixby*

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2021, I electronically filed the foregoing document through the court's electronic filing system, and that it has been served on all counsel of record through the court's electronic filing system.

/s/ Elizabeth A. Bixby

DESIGNATON OF RELEVANT DISTRICT COURT DOCUMENTS

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