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 REPLY BRIEF

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INTRODUCTION

Defendants' brief offers this Court nothing persuasive. As to the merits of Mr. Williams's claims, Defendants commit multiple cardinal sins of civil procedure, asking this Court to ignore facts plainly found in the complaint, draw inferences in their favor, and construe Mr. Williams's *pro se* complaint against him. They also repeatedly misapprehend well-established Eighth Amendment principles, casting aside contrary precedent from the Supreme Court and this Court. And Defendants barely respond to Mr. Williams's § 1997e(e) arguments, instead urging this Court to simply bypass the important statutory interpretation questions presented by this case. This Court should reverse.

I. Mr. Williams adequately pled failure-to-protect claims against defendants Hall, Malone, Jones, Mann, and the J-B unit counselor.

A. Defendants' contentions as to Hall, Malone, and Jones rely on fundamental civil procedure errors and a plain misreading of Mr. Williams's *pro se* complaint.

Every 1L civil procedure student knows that assessing the sufficiency of a complaint requires courts to view "all the facts alleged in the complaint, as well as any inferences reasonably drawn from those facts, in the light most favorable to the plaintiff." *Brown v. Bargery*, 207

F.3d 863, 867 (6th Cir. 2000). All non-conclusory allegations in the complaint must be accepted as true, and a *pro se* plaintiff's complaint is read "liberally." *Davis v. Prison Health Servs.*, 679 F.3d 433, 437 (6th Cir. 2012).

Defendants' brief does just the opposite in attempting to rebut Mr. Williams's failure-to-protect claim against Warden Hall, Case Manager Malone, and Unit Manager Jones. First, Defendants argue Mr. Williams "never asserted he told them why he desired to be moved," and thus didn't allege Defendants knew of the risk to his safety. App.Br. 11-12. That's flatly contradicted by the complaint. Mr. Williams explicitly alleged that "warden [Hall] and unit manager [Jones] and Sgt. Mann and case manager [Malone] *know inmates said they were going to kill me*!!" Complaint, R.1, PageID# 6 (emphasis added). Defendants simply ignore this plain allegation. Mr. Williams also alleged he "asked warden [Hall] to get me moved to another unit, he ignores me, *I told him about inmates putting knife to my throat* I'm ignored." *Id.* at PageID# 5 (emphasis added). Defendants reluctantly acknowledge *this* allegation, but argue that Mr. Williams did not say "when or how" he told Hall about being held at knifepoint. App.Br. 11. But the pleading standards do not

require plaintiffs—especially *pro se* plaintiffs—to timestamp each and every allegation. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). And the particular method by which Mr. Williams informed Defendants of the threats to his life does not impact their obligation to respond reasonably; in fact, a plaintiff need not notify prison officials at all to prevail on a failure-to-protect claim. *Farmer v. Brennan*, 511 U.S. 825, 848 (1994) ("[F]ailure to give advance notice is not dispositive."). Regardless, even the district court inferred that Mr. Williams's letters informed Defendants of the threats. Order, R.7, PageID# 7 (Mr. Williams "wrote to Warden Hall, Case Manager Malone, and Unit Manager Jones about having been threatened at knife-point, but they all ignored his letters."). Defendants' contrary contention is simply wrong.

Second, Defendants contend Mr. Williams did not allege "whether Hall, Malone, and Jones actually read the letters." App.Br. 11. Is it possible they ignored Mr. Williams's repeated pleas for help because they never read his letters? Maybe, but "the problem with this chain of reasoning is that it turns on *potential* inferences, not *necessary* ones." *Fabian v. Fulmer Helmets, Inc.*, 628 F.3d 278, 281 (6th Cir. 2010) (emphasis added). The screening stage does not allow "crediting one set

of reasonable inferences over the other," and it is certainly reasonable to infer—based on "common sense"—that they *did* read the letters. *Id.* Mr. Williams is therefore "entitle[d]" to proceed "to the next stage." *Id.*

Finally, Defendants claim Mr. Williams did not allege "whether he informed Hall, Malone, or Jones of an ongoing threat to his safety." App.Br. 11. Wrong again. As explained above, Mr. Williams explicitly alleged that all three "know inmates said they were going to kill me," and that at least Hall was told about "inmates putting knife to my throat." Complaint, R.1, PageID# 5-6. Defendants' apparent contention that this information would not convey "an ongoing threat to his safety" borders on the absurd. Mr. Williams had not been moved—despite repeatedly begging Defendants to do so—so he was still housed with the very same prison gang who raped him, held him at knifepoint, threw urine at him, stole from him, extorted him, and threatened to "kill me and send me out leaking to [the] morgue." *Id.* at PageID# 14, 5-6. "Common sense" again says that a plausible inference from these facts, *Fabian*, 628 F.3d at 281, is that Mr. Williams faced an ongoing threat to his safety from continuing to be housed with members of that gang. These allegations are more than enough to survive screening. *See, e.g.*, *Nelson v. Overberg*, 999 F.2d 162,

163-64 (6th Cir. 1993) (clearly established Eighth Amendment violation for prison official to do nothing other than send a form letter after receiving two letters from plaintiff requesting to be transferred because plaintiff had "enemies" at that prison and had received anonymous threat); *Hamilton v. Eleby*, 341 F. App'x 168, 171 (6th Cir. 2009) (affirming denial of summary judgment to defendants where prisoner received death threat from Aryan Brotherhood and was previously assaulted by its members at different prison).

B. Defendants have no answer to Mann exacerbating the danger to Mr. Williams by publicly labeling him a snitch and publicizing his sex crime conviction.

Defendants' arguments as to defendant Mann are even weaker. They first contend that simple verbal harassment does not violate the Eighth Amendment. App.Br. 12. Perhaps, but that has nothing to do with this case. Defendants also claim Mann lacked the requisite state of mind because Mr. Williams did not allege "he informed [Mann] or that she otherwise learned of a substantial risk of serious harm." *Id.* at 13. Once again, Defendants' assertion is unmoored from the facts and the law; even the district court concluded that Mr. Williams stated a deliberate indifference claim against Mann, only dismissing it on the

ground Mr. Williams had not satisfied § 1997e(e). Order, R.7, PageID# 9.

The complaint unmistakably alleges that Mann knew the prison gang had threatened to kill Mr. Williams and had held him at knifepoint. Mr. Williams recounted that "Sgt. Mann . . . *know[s] inmates said they were going to kill me*!!" Complaint, R.1, PageID# 6 (emphasis added). And he alleged that Mann "came in my living area and cussed [at] me in front [of] inmates [and] told me *to quit telling them about inmates who came in my cell with knife*." *Id.* at PageID# 5 (emphasis added); *id.* at PageID# 14 ("I wrote Sgt. Mann—she came in living area and cursed me [and] told me hell no she [was] not helping me."). It's hard to imagine how these allegations could be any clearer, even setting aside the liberal construction owed to Mr. Williams's *pro se* complaint.

And Defendants have no answer at all for Mann's conduct that affirmatively *increased* Mr. Williams's risk of harm; they simply don't mention it. To recap: Mann didn't *just* refuse to take any steps to protect Mr. Williams from the gang; what she did was far worse. First, she loudly labeled him a "snitch" in front of other prisoners. Complaint, R.1, PageID# 5. As the opening brief explains, courts recognize that labeling

someone a "snitch" can constitute deliberate indifference, because it significantly increases the chances they will be attacked. Op.Br. 53-54 (citing cases).

But Mann didn't stop at labeling Mr. Williams a snitch. She also publicized Mr. Williams's sex crime conviction by leaving a copy of it in the common area for all to see. Complaint, R.1, PageID# 14. Defendants don't dispute that this is a plausible inference to draw from the complaint. *See* Op.Br. 55. And like labeling someone a snitch, labeling someone a sex offender poses an Eighth Amendment problem. Op.Br. 54-55 (citing cases); *see also Leary v. Livingston Cnty.*, 528 F.3d 438, 442 (6th Cir. 2008) (guard who told other detainees plaintiff was charged with sexually assaulting a minor and then failed to take reasonable steps to protect plaintiff violated clearly established law); *LaFountain v. Martin*, 334 F. App'x 738, 741 (6th Cir. 2009) (construing *pro se* complaint to allege Eighth Amendment claim where prison official labeled plaintiff as "a snitch and a sexual predator," allegedly to "motivate other prisoners to take hostile action against him").

C. Controlling precedent rejects Defendants' argument that a more-than-*de-minimis* physical injury is required in all non-excessive-force Eighth Amendment claims.

Defendants argue that a more-than-*de-minimis* physical injury must have actually befallen the plaintiff to state an Eighth Amendment claim, except in excessive force cases. App.Br. 17-25. As a threshold matter, even if Defendants had a point, there was a more-than-*de-minimis* injury here. *See* Op.Br. 33-34. Mr. Williams alleged the prison gang hit him in the head, and drawing all inferences in his favor, *Brown*, 207 F.3d at 867, that blow to the head was the result of Defendants' deliberate indifference to Mr. Williams's repeated pleas for help. Complaint, R.1, PageID# 14. In any event, Defendants' contention would come as a surprise to the Supreme Court, this Court, and this Court's sister circuits, which have held that the Eighth Amendment doesn't require a physical injury at all.

The Supreme Court has explained that the Eighth Amendment may be violated where the complained-of conditions cause no physical injury, or where there is only a threat of *future* physical harm. *See, e.g.*, *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993) (prisoner plausibly alleged conditions-of-confinement claim from secondhand smoke even

though he had not yet suffered any physical injury, because "the Eighth Amendment protects against *future* harm to inmates" and the smoke caused an "unreasonable risk of serious damage to his future health") (emphasis added); *Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020) (clearly established Eighth Amendment violation to hold prisoner in feces-covered cells for six days, even though prisoner did not suffer physical injury from such filthy conditions).

This Court, too, has found Eighth Amendment violations outside of the excessive force context where no more-than-*de-minimis* physical injury has befallen the plaintiff or where the only injury alleged was psychological. For example, this Court held that allowing female guards to watch a male prisoner shower at close range and for extended periods—that is, conduct causing only psychological injury—stated a plausible Eighth Amendment claim. *Kent v. Johnson*, 821 F.2d 1220, 1227-28 (6th Cir. 1987). Similarly, this Court reversed a grant of summary judgment to defendants where the plaintiff alleged cold, wet conditions in his cell, even though no physical injury was alleged. *Spencer v. Bouchard*, 449 F.3d 721, 728-29 (6th Cir. 2006), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199 (2007); *see also Brown*, 207

F.3d at 868 (plausible Eighth Amendment claim where plaintiffs alleged improperly installed bunk beds posed unreasonable risk of *future* injury).

This Court's sister circuits agree. In a strikingly similar case, the Tenth Circuit denied qualified immunity where a prison guard labeled the plaintiff a snitch, even though no physical harm of any kind ever came to the plaintiff. *Benefield v. McDowall*, 241 F.3d 1267, 1272 (10th Cir. 2001); *see also, e.g.*, *Beal v. Foster*, 803 F.3d 356, 358 (7th Cir. 2015) (prisoner stated Eighth Amendment claim for harassment by prison official, in part because harassing remarks implied that prisoner was gay and thus "increased the likelihood of sexual assaults on him by other inmates").

In addition to being plainly foreclosed by precedent, Defendants' arguments are also factually wrong. They again ignore key allegations in Mr. Williams's complaint, claiming that other than his rape, Mr. Williams suffered only emotional injury. App.Br. 24. That simply isn't true: in the weeks and months *after* his rape, the prison gang hit Mr. Williams in the head on at least one occasion, held a knife to his throat, repeatedly threw urine in his cell, extorted him for money, and stole from him. Complaint, R.1, PageID# 5-6, 14.

Defendants heavily rely on *Wilson v. Yaklich*, 148 F.3d 596 (6th Cir. 1998), *see* App.Br. 22-24, but that case does not help them. For one, the facts of this case are markedly different. Whereas Mr. Williams alleged that the prison gang raped him, made specific, repeated death threats to him, hit him in the head at least twice (once during his rape and once afterward), held a knife to his throat, stole from him, and threw urine into his cell, the *Wilson* plaintiff alleged only that a gang twice made unspecified threats to him, but never caused him any physical or tangible harm. *Id.* at 600. Whereas Mr. Williams alleged that he suffered debilitating PTSD—including constant flashbacks, frequent shaking and crying, ever-present paranoia, and persistent insomnia—the plaintiff in *Wilson* did not "even hint that he has suffered any emotional or psychological injury from the alleged threats." *Id.* at 601. Whereas Mr. Williams alleged that Defendants not only ignored his repeated requests for protection but also took steps to *increase* his risk of harm—by way of Mann publicly labeling him a snitch and allowing other prisoners to learn about his sex crime conviction—the *Wilson* plaintiff did not allege "any egregious failures on the part of prison officials." *Id.* at 600.

For another, Defendants read *Wilson* to categorically bar Eighth Amendment damages claims for psychological injury. App.Br. 24. This Court need not reach the issue—because, as described, Mr. Williams suffered multiple physical and tangible harms in addition to severe PTSD—but in any event, Defendants are wrong. First, as noted previously, *Kent* held ten years before *Wilson* that a prisoner who suffered psychological injury from female guards watching him shower stated an Eighth Amendment claim. 821 F.2d at 1227-28. *Kent*'s holding, of course, was binding on all later panels—including *Wilson*. *Wright v. Spaulding*, 939 F.3d 695, 700 (6th Cir. 2019). Second, the Eighth Amendment "draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981). It is not amenable to any "static test," *id.*, and "admits of few absolute limitations," *Hudson v. McMillian*, 503 U.S. 1, 8 (1992). Thus, what constitutes a sufficiently serious deprivation may evolve as "the basic mores of society change." *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008). So even if *Wilson* could be read as broadly as Defendants contend, and even if *Wilson* were correctly decided under the societal standards of 24 years ago, "conduct that might not have been

seen to rise to the severity of an Eighth Amendment violation [decades] ago may now violate community standards of decency." *Crawford v. Cuomo*, 796 F.3d 252, 260 (2d Cir. 2015). Indeed, as Defendants note, *Wilson* relied heavily on a Seventh Circuit case, *Babcock v. White*, 102 F.3d 267, 272 (7th Cir. 1996). But in more recent years, the Seventh Circuit reversed its earlier position without needing to go en banc, holding that current standards of decency mean the Eighth Amendment protects against the infliction of psychological pain in some circumstances. *See Beal*, 803 F.3d at 357-58; *Lisle v. Welborn*, 933 F.3d 705, 717-18 (7th Cir. 2019). In short, *Wilson* is factually inapposite and legally questionable, and cannot sustain the weight Defendants place on it.[1]

[1] Defendants also gesture vaguely at a causation argument. App.Br. 21-22. This argument is unavailing. To establish causation under § 1983, a plaintiff "need only demonstrate a link between each defendant's misconduct and [the plaintiff's] injury." *Clark-Murphy v. Foreback*, 439 F.3d 280, 292-93 (6th Cir. 2006). In the failure-to-protect context, this Court held a jury could find that prison officials' failure to transfer the plaintiff or his attackers after he was attacked the first time was the proximate cause of the second and third attacks the plaintiff suffered. *Roberts v. Coffee Cnty.*, 826 F. App'x 549, 554-55 (6th Cir. 2020). Here, Defendants' deliberate indifference to Mr. Williams's repeated pleas for help after he was raped plausibly caused Mr. Williams myriad harms, including getting hit in the head, receiving death threats, being extorted,

D. Defendants do not contest that Mr. Williams stated a claim for failing to protect him from being raped.

As the opening brief details, Mr. Williams alleged a straightforward failure-to-protect claim relating to his rape. *See* Op.Br. 46-48. Defendants do not contest the merits of this claim; all they say is that Mr. Williams did not sufficiently name the J-B unit counselor as a defendant. App.Br. 15-16. That's incorrect.

First, Defendants contend that the J-B counselor was only listed on the complaint's service list, not the caption. App.Br. 15. But Defendants omit that the complaint had *two* captions; although the J-B unit counselor wasn't listed on one, she *was* listed on the other. *Compare* Complaint, R.1, PageID# 13 (caption listing J-B unit counselor), *with id.* at PageID# 1 (other caption). Given the liberal construction owed *pro se* complaints, listing the J-B counselor in one of the captions and on the service list sufficed. *See Berndt v. Tennessee*, 796 F.2d 879, 882 (6th Cir. 1986) ("It would be a miscarriage of justice to preclude this *pro se* plaintiff

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and having urine thrown at him. Complaint, R.1, PageID# 5-6, 14; Op.Br. 50-53. And that's all putting aside his failure-to-protect claim related to his rape. Op.Br. 46-50. Moreover, "proximate causation, or the lack of it, is generally a question of fact to be decided by a jury," *Roberts*, 826 F. App'x at 554, and thus is inappropriate for resolution at screening.

from seeking redress for his alleged injuries on a procedural defect, particularly when the complaint, in substance, clearly indicates . . . the real parties-defendants."); *see also Bass v. Wendy's of Downtown, Inc.*, 526 F. App'x 599, 601 (6th Cir. 2013) ("prisoner pro se litigants are given limited special aid and consideration"); Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice.").

Second, Defendants take the position that even if Mr. Williams named the J-B counselor as a defendant, he still could not proceed with this claim. App.Br. 16-17. Not so. For one, Defendants overlook that, unlike the cases on which they rely, Mr. Williams did not list a wholly unnamed Doe defendant. Indeed, given all of the information in the complaint, it's entirely possible that the complaint may have been able to be successfully served on her as-is: it provided her job title (and for all we know, this prison might only employ *one* J-B unit counselor), address and place of employment, the specific unit to which she was assigned, the month the allegations took place (only two months before the complaint was filed), and her gender. This case thus looks much more like *Dean v. Barber*, 951 F.2d 1210, 1216 (11th Cir. 1992), than it does the "John Doe" cases Defendants cite. In *Dean*, the Eleventh Circuit held that naming

the "Chief Deputy of the Jefferson County Jail" was "sufficiently clear to allow service of process," even though the defendant's name was not provided and his actual title was "Chief Correctional Officer." *Id.*

And contrary to Defendants' contentions, App.Br. 16, Rule 15(c) allows Mr. Williams to proceed with this claim. Rule 15(c)(1)(C) provides that when an amendment "changes the party or the naming of the party against whom a claim is asserted," it "relates back" to the date of the original complaint under certain conditions—relevant here, where the party to be brought in (1) "received such notice of the action that it will not be prejudiced in defending on the merits," and (2) "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." Fed. R. Civ. P. 15(c)(1)(C).

On the first prong, this Court has held that notice may be imputed to an unnamed defendant in § 1983 cases where their employer is a named defendant and "the complaint alleges in substance that the new defendants committed the illegal acts." *Berndt*, 796 F.2d at 883-84. Here, the district court ordered that CoreCivic—the corporation that manages the prison at issue and employs its staff, including the J-B

counselor—be added as a defendant. Order, R.7, PageID# 5-6 n.1. And because *no* defendant has yet been served—since the district court dismissed the complaint prior to service—the J-B counselor defendant certainly would not be "prejudiced in defending on the merits," Fed. R. Civ. P. 15(c)(1)(C)(i).

As to the second prong, Defendants rely on precedent of this Court that is incompatible with intervening Supreme Court precedent. *See* App.Br. 16 (citing *Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir. 1996) (holding that changing the name of a Doe defendant does not "satisfy the 'mistaken identity' requirement" of Rule 15(c))). The Supreme Court more recently considered the interpretation of Rule 15(c) in *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538 (2010); although the circumstances in *Krupski* differed from those here, *Krupski* reveals two fatal flaws in *Cox*'s holding.

First, *Krupski* makes clear that "mistake" should be read to encompass lack of knowledge: "mistake" includes "'a wrong action or statement proceeding from faulty judgment, *inadequate knowledge*, or inattention.'" *Id.* at 548-49 (emphasis added) (quoting Webster's Third New International Dictionary 1446 (2002)); *accord Arthur v. Maersk*, 434

F.3d 196, 208-09 (3d Cir. 2006) ("[A] 'mistake' is no less a 'mistake' when it flows from lack of knowledge as opposed to inaccurate description."). Mr. Williams's listing of the J-B counselor as a defendant without using her name was undeniably a result of "inadequate knowledge," and under *Krupski*, was thus a "mistake."

Second, *Krupski* explained that this provision isn't about what the *plaintiff* knew, but what the would-be *defendant* should have known: "The question under Rule 15(c)(1)(C)(ii) is what the prospective defendant reasonably should have understood about the plaintiff's intent in filing the original complaint against the first defendants." *Krupski*, 560 U.S. at 553-54. That is, after receiving notice of the complaint, should the prospective defendant have known she was the intended defendant listed in the original complaint? *Id.* at 548, 553-54. Here, the answer is yes. By naming the J-B counselor as a defendant and describing her actions with specificity, Mr. Williams plainly signaled that he intended to sue her but lacked the necessary information to fully identify her.[2]

[2] *Smith v. City of Akron*, 476 F. App'x 67, 69-70 (6th Cir. 2012), which rejected an argument that *Krupski* overruled *Cox*, does not change this

Allowing relation back under Rule 15(c) here is consistent with the Rule's intent to "prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense." Fed. R. Civ. P. 15 advisory committee's note to 1991 amendment. It is especially important in the context of prisoner civil rights claims, because prisoner-plaintiffs cannot serve defendants or begin discovery (including discovery into full names of defendants) until their complaints have passed a mandatory pre-service screening by the district court, which can take months or even years. Indeed, in this case, Mr. Williams filed his complaint in June 2020 (only two months after his rape), but the district court did not screen his complaint until March 2021. *Compare* Complaint, R.1, PageID# 12 (complaint dated June 23, 2020), *with* Order, R.7, PageID# 1 (order

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analysis. As an unpublished decision, *Smith* is of course not controlling precedent. Mr. Williams also respectfully submits that *Smith* was incorrectly decided, as it did not grapple with the above-described holdings of *Krupski*. Moreover, *Smith* faulted the plaintiff for "wait[ing] until the last day of the two-year limitations period to file his complaint." *Id.* at 69. No such delay or inexcusable neglect occurred here: Mr. Williams filed his complaint within two months of being raped. And unlike the *Smith* plaintiff, Mr. Williams was both *pro se* and incarcerated; he thus had far fewer options, if any, to discover the J-B counselor's name.

screening complaint, dated March 26, 2021). Because Mr. Williams's rape occurred in April 2020, the timing of the screening order left him with *at most* one month to file an amended complaint, have that amended complaint undergo another screening, issue discovery requests, receive responses, and then amend a second time to include the J-B counselor's actual name within the one-year limitations period—an impossibility. As this case demonstrates, even prisoners who diligently and timely file their complaints have their hands tied as the clock ticks down on the statute of limitations, until and unless the district court allows their complaint to proceed to service, which may or may not happen within the limitations period. Defendants' interpretation thus creates an "unjust advantage" for prison officials who violate the constitutional rights of their charges, in conflict with the Rule's intent.

Adopting Defendants' interpretation would also create perverse incentives. Plaintiffs might be incentivized to name as a defendant a specific, actual person even though not the *right* person—putting them firmly within the ambit of the Rule—rather than a Doe defendant, potentially dragging an innocent person into litigation. On the flip side, prison officials who commit misconduct would be incentivized to prevent

prisoners from learning their names, knowing that if they did so for a year or two (or even just until the prisoner they harmed was transferred), they would get off scot-free. This is plainly not the purpose of the Rule. *Krupski*, 560 U.S. at 550 (interpreting Rule 15(c) to avoid a "windfall" for would-be defendants, consistent with the Rule's purpose).

Finally, Mr. Williams could change the name of the J-B unit defendant under Fed. R. Civ. P. 15(c)(1)(A), which allows relation back when "the law that provides the applicable statute of limitations allows relation back"—here, Tennessee law. The Tennessee Supreme Court has recognized "the great liberality" of *its* relation-back rule, explaining that it was "designed so cases would be determined on their merits and not on rigid technicalities." *Floyd v. Rentrop*, 675 S.W.2d 165, 168 (Tenn. 1984) (cleaned up). The J-B counselor is "a mislabel[ed] party" Mr. Williams "intended to sue"—as opposed to "a new party who was simply overlooked"—and so falls within the "purpose" of Tennessee's rule. *Townes v. Sunbeam Oster Co.*, 50 S.W.3d 446, 450-51 (Tenn. Ct. App. 2001) (cleaned up).

Whether under Rule 15(c)(1)(C) or 15(c)(1)(A), this Court should hold that Mr. Williams adequately named the J-B counselor as a

defendant. Doing so is consistent with the Rules and Supreme Court precedent, and avoids "the miscarriage of justice" that would come from "preclud[ing] this *pro se* plaintiff from seeking redress for his alleged injuries on a procedural defect, particularly when the complaint, in substance, clearly indicates" the intended defendant. *Berndt*, 796 F.2d at 882.

II. Prison officials' outright refusal to provide Mr. Williams with mental health treatment for his severe PTSD states a plausible Eighth Amendment claim.

As the opening brief details, Mr. Williams plausibly alleged an Eighth Amendment violation resulting from the complete denial of mental health care to treat his severe PTSD, despite his repeated requests for treatment. Op.Br. 58-61. The district court dismissed this claim on the sole ground that Mr. Williams had not specifically identified *which* prison officials refused him care. Order, R.7, PageID#15. The opening brief explains why that's wrong: Mr. Williams identified his "Case Manager" as one of the responsible officials, and in context, this plausibly referred to defendant Case Manager Malone, especially given the "sympathetic reading" and liberal construction owed to Mr.

Williams's *pro se* complaint. Op.Br. 60-61; *Boswell v. Mayer*, 169 F.3d 384, 388 (6th Cir. 1999).

Defendants acknowledge it's "possible" that the "Case Manager" referenced is Case Manager Malone, but argue "it is just as possible that 'case manager' referred to someone else." App.Br. 14. As with Defendants' failure-to-protect arguments, "the problem with this chain of reasoning is that it turns on *potential* inferences, not *necessary* ones." *Fabian*, 628 F.3d at 281 (emphasis added). As between two reasonable inferences, only the one in favor of Mr. Williams—here, that "Case Manager" referred to Malone—may be drawn at this stage. *Brown*, 207 F.3d at 867.

On the merits, Defendants do not contest the district court's finding that Mr. Williams sufficiently pled the objective prong of this claim, nor could they: his post-rape PTSD was debilitating, causing him to suffer anxiety, constant flashbacks, frequent shaking and crying, paranoia, and persistent insomnia. Complaint, R.1, PageID# 6, 14-15; *see* Op.Br. 59-60. They do, however, briefly contend that Mr. Williams inadequately pled the subjective prong. That's wrong. Mr. Williams's complaint alleged that he made multiple requests for mental health services, and as this

Court has held, "[i]f a prisoner asks for and needs medical care, it must be supplied." *Danese v. Asman*, 875 F.2d 1239, 1244 (6th Cir. 1989); Op.Br. 60. There is no question that Mr. Williams asked for mental health care, nor that he needed it. Complaint, R.1, PageID# 6, 14-15. Defendants claim Mr. Williams didn't tell Malone *why* he needed mental health care, but it's at least plausible to infer that Mr. Williams explained his symptoms when he requested care. *See Brown*, 207 F.3d at 867. And Mr. Williams's rape was widely known among staff, *see* Complaint, R.1, PageID# 5, 13-14, so it's also plausible to infer that Malone knew Mr. Williams needed mental health care in connection with his rape. *See Lucas v. Chalk*, 785 F. App'x 288, 291-92 (6th Cir. 2019) ("[W]e do not doubt" that "a deliberate refusal to treat . . . psychological trauma from being raped" would violate the Eighth Amendment); *Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001) (courts can "infer from circumstantial evidence that a prison official had the requisite knowledge"). For a *pro se* plaintiff, this was enough to survive screening. *See Williams v. Curtin*, 631 F.3d 380, 384 n.2 (6th Cir. 2011) (even if prisoner's claim "could have been stated in stronger terms," dismissal was "nonetheless premature given the liberal construction accorded to

pro se pleadings"); *Amick v. Ohio Dep't of Rehab. & Correction*, 521 F. App'x 354, 362 (6th Cir. 2013) (faulting district court for "fail[ing] to view the allegations in the light most favorable to plaintiffs," even if "the allegations of the claim . . . could be more explicit"); *Franklin v. Rose*, 765 F.2d 82, 85 (6th Cir. 1985) ("The appropriate liberal construction [of *pro se* filings] requires active interpretation in some cases.").

III. Defendants make no attempt to meaningfully engage with Mr. Williams's § 1997e(e) arguments.

In a scant 3 pages, Defendants make a few jumbled arguments in response to Mr. Williams's analysis of the § 1997e(e) questions implicated by this case. Their limited arguments fall apart under the slightest of scrutiny.

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

As the opening brief explains, Mr. Williams's rape by a prison gang satisfies the strictures of § 1997e(e) because it is a "sexual act" and was both temporally close to and inextricably intertwined with *all* of Mr. Williams's claims. Op.Br. 17-23. This interpretation is supported by the text of the statute and precedent from this Court's sister circuits, and the district court's imposition of a per-claim causal requirement has no basis in text, precedent, or legislative history. Op.Br. 17-22.

Defendants appear to make two arguments in response. First, Defendants reiterate their view that Mr. Williams did not allege Defendants caused him "*any harm*," so § 1997e(e) is irrelevant. App.Br. 29. But for all the reasons explained previously, *supra* Part I.C., that's plainly incorrect. Second, Defendants contend that Mr. Williams's position means § 1997e(e) "could be satisfied as long as the plaintiff suffered some physical injury at the hands of someone at some point in time." App.Br. 29-30. Defendants punch at a strawman. Mr. Williams disavowed Defendants' feared interpretation, and the opening brief explains why this case does not require this Court to engage in any difficult line-drawing about how much of a connection § 1997e(e) requires between the predicate sexual act or physical injury and the alleged constitutional violation. Op.Br. 22-23. As the opening brief details, Mr. Williams's rape was part and parcel of *all* his claims, not just his failure-to-protect claim related to his rape. *Id.*

Defendants' silence in response to Mr. Williams's other arguments speaks volumes. They do not engage with the text of the statute, despite the Supreme Court's admonition to "start with the text" in "any statutory construction case." *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013) (cleaned

up). And they don't even mention—let alone rebut—the precedent from other circuits rejecting the district court's cramped interpretation. *See* Op.Br. 20-22. Nor do Defendants point to *any* caselaw interpreting § 1997e(e) in the way that they advocate. These conspicuous omissions, combined with the weakness of the arguments Defendants *do* make, only reinforce that the district court got it wrong.

B. Defendants make no arguments in support of imposing a more-than-*de-minimis* requirement under § 1997e(e).

Notably absent from Defendants' brief is any argument that § 1997e(e) requires a more-than-*de-minimis* physical injury, despite Mr. Williams's detailed walkthrough of why such a requirement is incompatible with basic principles of statutory interpretation and current Supreme Court precedent, *see* Op.Br. 24-32. Defendants oddly *do* argue that the Eighth Amendment—not § 1997e(e)—requires a more-than-*de-minimis* injury, but as explained, *see supra* Part I.C., that argument is foreclosed by precedent of the Supreme Court and this Court.

C. Section 1997e(e) does not warrant complete dismissal of Mr. Williams's claims.

As the opening brief explains, the district court erred in dismissing Mr. Williams's case in its entirety on § 1997e(e) grounds, for two reasons.

Op.Br. 35-45. One, § 1997e(e) only bars compensatory damages "for mental or emotional injury"; it does not impact other forms of relief, such as injunctive relief, punitive damages, and nominal damages. Op.Br. 38-45. Two, this Court has recently indicated that damages for Eighth Amendment *constitutional* injuries may not be barred by § 1997e(e). Op.Br. 35-38. Although this Court need not necessarily reach these particular issues—as it could decide this case by holding that Mr. Williams's rape served as the requisite "sexual act" for all his claims, *see* Op.Br. 23—Defendants offer this Court no meaningful arguments to the contrary.

1. Mr. Williams has several forms of relief available to him that are unaffected by § 1997e(e)'s strictures.

Defendants do not persuasively contest that complete dismissal was inappropriate because Mr. Williams had other types of relief available to him, not just compensatory damages for "mental or emotional injury." Op.Br. 38-45. Defendants argue that because Mr. Williams has now been transferred to a different prison, any claims he had for injunctive relief are moot and thus complete dismissal was warranted. App.Br. 25-27. Although it's true that prison transfers typically moot requests for injunctive relief, Mr. Williams is not

foreclosed from seeking injunctive relief under the circumstances here. Mr. Williams's complaint requested a transfer away from Hardeman County Correctional Facility, but as Defendants note, App.Br. 26, he has since been transferred twice to other prisons. This means he could no longer request an injunction transferring him *away* from Hardeman, but doesn't mean he can't request *any* injunctive relief. To the contrary, Mr. Williams could still request an injunction barring a transfer *back* to Hardeman, given the substantial risk of serious harm he faced and plausibly still faces at that facility, and the realistic likelihood (given his multiple transfers over the last year and a half) that he may otherwise be transferred back.

It matters not that his complaint didn't request *that* injunctive relief: Rule 54(c) requires that final judgments "grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." Fed. R. Civ. P. 54(c). As this Court's sister circuits have recognized, while Rule 8 requires the complaint to include "a demand for judgment for relief," that demand is "not itself a part of the plaintiff's claim." *Bontkowski v. Smith*, 305 F.3d 757, 762 (7th Cir. 2002) (Posner, J.) (citing cases). Thus, even if a plaintiff seeks relief to which he is not

entitled, "this would not justify dismissal of the suit" unless the plaintiff indicates he "wants the improper relief sought in the complaint or nothing." *Id.*; *see also* Wright, Miller, & Kane, Federal Practice and Procedure § 2664 (4th ed.) ("[A] failure to demand the appropriate relief will not result in a dismissal. The question is not whether plaintiff has asked for the proper remedy but whether plaintiff is entitled to any remedy."). And Mr. Williams could, of course, seek to amend and include such relief on remand.

And even putting aside compensatory damages and injunctive relief, complete dismissal was still inappropriate because nominal and punitive damages remain available to Mr. Williams. *See Small v. Brock*, 963 F.3d 539 (6th Cir. 2020). Although his *pro se* complaint did not specifically seek nominal damages, nominal damages automatically "follow from the fact of a constitutional violation," *Pagan v. Village of Glendale*, 559 F.3d 447, 478 n.1 (6th Cir. 2009), and are "the damages awarded by default until the plaintiff establishes entitlement to some other form of damages," *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800 (2021). *See Allah v. Al-Hafeez*, 226 F.3d 247, 251 (3d Cir. 2000) ("Although [the plaintiff] does not expressly seek nominal damages in his

complaint, this court has held that it is not necessary to allege nominal damages."). And Mr. Williams could easily amend his complaint to include punitive damages, as the allegations here warrant such an award and Rule 54(c) requires that final judgments "grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." Fed. R. Civ. P. 54(c).

2. Defendants do not engage with this Court's recent indications that *King v. Zamaria* should be extended to exclude compensatory damages for Eighth Amendment constitutional injuries from § 1997e(e)'s requirements.

On the second issue—whether the reasoning of *King v. Zamaria*, 788 F.3d 207 (6th Cir. 2015), should be extended to allow compensatory damages for Eighth Amendment *constitutional* injury—Defendants say little. App.Br. 30. They merely reiterate their view that the Eighth Amendment requires a more-than-*de-minimis* physical injury and that Mr. Williams failed to allege one, arguing that there can be no damages for constitutional injury where no injury has occurred. App.Br. 30. That's wrong, for all the reasons previously explained. *See supra* Part I.C., Part III.B. Glaringly absent from Defendants' brief is any mention of this Court's recent decisions indicating, without definitively deciding, that *King* extends to violations of the Eighth Amendment. *See* Op.Br. 35-

38 (citing *Small v. Brock*, 963 F.3d 539 (6th Cir. 2020) and *Lucas*, 785 F. App'x at 292). Defendants thus offer no basis to doubt the soundness of the reasoning in those opinions for why *King* should be extended to Eighth Amendment claims.

CONCLUSION

This Court should reverse and remand for further proceedings.

Dated: April 1, 2022

Respectfully submitted,

/s/ Elizabeth A. Bixby

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CERTIFICATE OF COMPLIANCE

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 6,486 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: April 1, 2022 */s/ Elizabeth A. Bixby*

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2022, 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