No. 22-6958

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

REGINALD CLARK,

Plaintiff-Appellant,

v.

JACQUELINE SMITH; ANNA DEMEKA BELL; MEDICAL DEPARTMENT, Lumberton Correctional Institution; NURSE CLARK; NURSE SOLES; T. LOCKLEAR, Officer; LUMBERTON CORRECTIONAL INSTITUTION NURSING STAFF; NEUSE CORRECTIONAL INSTITUTION NURSING STAFF; NURSE HALL,

Defendant-Appellees.

On Appeal from the United States District Court for the Eastern District of North Carolina,
No. 5:21-ct-03323-FL
The Honorable Louise Wood Flanagan, District Judge

OPENING BRIEF OF APPELLANT REGINALD CLARK

David M. Shapiro
Roderick & Solange MacArthur Justice Center
Northwestern Pritzker School of Law
375 E. Chicago Avenue
Chicago, IL 60611
(312) 503-0711

Samir Deger-Sen
Frances Chapman*
Dori Rahbar*
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-4619

December 5, 2022

Counsel for Appellant

(additional counsel listed on inside cover)

James A. Tomberlin
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2141

Marissa Marandola
LATHAM & WATKINS LLP
200 Clarendon Street
Boston, MA 02116
(617) 948-6000

**Pending Admission to NY Bar*

TABLE OF CONTENTS

Page

Page

TABLE OF AUTHORITIES

Page(s)

CASES

Page(s)

Page(s)

Page(s)

Page(s)

STATUTES

OTHER AUTHORITIES

INTRODUCTION

This appeal involves as clear an example of deliberate indifference to a prisoner's medical needs as one can imagine. Plaintiff Reginald Clark alleges that he needlessly suffered excruciating pain and developed a permanent limp from a torn Achilles tendon that prison officials did not adequately treat. Despite Mr. Clark seeking medical attention for extreme swelling and pain in his foot, Defendants consistently failed to provide even the most basic treatment, such as a mobility aid or pain medication. They rebuffed or ignored his requests for medical care again and again, and made no reasonable efforts to timely diagnose his injury. And by the time Mr. Clark finally received a diagnostic MRI—a remarkable *six months* after his initial injury—he had sustained permanent damage to his foot, and will now never walk unassisted again.

Those allegations *far* surpass the threshold required to plausibly allege a violation of Mr. Clark's rights under the Eighth Amendment. To state an Eighth Amendment claim, a prisoner must allege that he suffered from an objectively serious medical need and that prison officials acted with subjective deliberate indifference towards that need. *Hixson v. Moran*, 1 F.4th 297, 302 (4th Cir. 2021). Here, there is no dispute that Mr. Clark suffered from an objectively serious medical need. And Defendants' refusal to provide Mr. Clark with even the most rudimentary interim treatment is alone enough to establish deliberate indifference. That it then

took six months to properly diagnose a highly common injury makes this a particularly egregious case. Defendants' inaction in the face of obvious suffering is the very definition of deliberate indifference.

The district court's decision to the contrary was deeply flawed. In reviewing the Amended Complaint on pre-service screening, without even requiring Defendants to respond, the district court applied a heightened legal standard that would be inappropriate for any pleading, let alone the pro se pleading at issue. The district court first drew inferences *against* Mr. Clark, in violation of the generally applicable dismissal standard, which requires that a court take "all facts pleaded" as true and "draw all reasonable inferences in [the plaintiff's] favor." *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014). The district court then compounded this error by paying no regard to the well-established rule that a pro se complaint "is to be liberally construed," *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), especially if it raises civil rights claims. Instead of liberally construing the Amended Complaint, the district court sought to poke holes in Mr. Clark's allegations, probing them for detail and specificity that no plaintiff—but especially not a pro se plaintiff—must provide at the pleading stage. In so doing, the court overlooked both the obvious nature of Mr. Clark's injury, which he alleged caused swelling to his right leg from foot to knee and difficulty walking, and its obligation to read the Amended Complaint in the light most favorable to Mr. Clark. And to top it off, the court

declined to even give Mr. Clark an opportunity to amend, even though the dismissal was purportedly based on the insufficiency of the factual allegations and Mr. Clark had no prior opportunity to address the perceived deficiencies in his pleading.

In short, the district court's decision leaps off the page as wrong. Mr. Clark will suffer life-long pain and disability because prison officials did not give him even the most basic consideration owed in a humane prison system. And the district court compounded this injustice by failing to take Mr. Clark's allegations seriously. The district court's decision defied this Court's precedents and should be reversed.

STATEMENT OF JURISDICTION

This appeal is taken from an August 12, 2022 final judgment of the district court dismissing Mr. Clark's Amended Complaint brought under 42 U.S.C. § 1983. JA31-38; JA39. The notice of appeal was timely filed on August 19, 2022. JA40. This Court has jurisdiction under 28 U.S.C. § 1291.

ISSUES PRESENTED

1. Whether the Amended Complaint's allegations that Defendants (1) knew of Mr. Clark's initial injury and resulting pain and mobility issues; (2) provided no basic treatment, including pain medication or a mobility aid; and (3) did not arrange an MRI for six months after the injury occurred state a claim of deliberate indifference in violation of the Eighth Amendment.

2. Whether the district court erred by failing to construe Mr. Clark's pro se Amended Complaint liberally, taking all plausible facts as true and drawing all reasonable inferences in his favor.

3. Whether the Amended Complaint's allegations that supervisory Defendants were aware of Mr. Clark's injury and failed to ensure that he received adequate medical care state a claim for supervisory liability.

4. Whether the district court abused its discretion by denying Mr. Clark leave to amend his pro se pleading.

STATEMENT OF THE CASE

A. Factual Background

In March 2021, Mr. Clark, then incarcerated at the Neuse Correctional Institution ("NCI"), suffered a ruptured Achilles tendon. JA24, JA26. "An Achilles tendon rupture is a tear in the tendon which impedes the ability of the foot to point downward, causing pain and limiting mobility." *Petties v. Carter*, 836 F.3d 722, 726 (7th Cir. 2016) (en banc). "Walking around on a ruptured tendon exacerbates the injury," and "[w]hen an Achilles rupture is not immobilized, the stretching apart of the torn tendon edges when the injured foot hits the ground causes severe pain and weakness." *Id.*[1]

[1] *See generally* Mayo Clinic, *Achilles tendon rupture: Symptoms & causes*, https://www.mayoclinic.org/diseases-conditions/achilles-tendon-rupture/symptoms-causes/syc-20353234 (last visited Dec. 1, 2022) (explaining that "[t]he Achilles

Three days after he tore his Achilles tendon, Mr. Clark "declared a medical emergency" to address the increasingly "extreme swelling and pain" in his foot, the first of many such requests for care. JA24. Defendant Hall, a triage nurse, examined him and "purportedly scheduled [Mr. Clark] for an x-ray sometime in April." JA24. An unexplained delay of about a month followed, and Mr. Clark did not receive an x-ray until "sometime in May" 2021. JA24. Hall "informed" Mr. Clark that "the x-ray revealed no breaks or fractures to any bones" and did "[n]othing further" to treat him. JA24.

Without treatment for his injury, Mr. Clark's pain continued. He declared a second medical emergency. JA24. This time, a physician evaluated the injury and "informed" Mr. Clark "that he was recommending that an MRI be conducted" on Mr. Clark's right foot. JA24. But no MRI took place, and Mr. Clark received no other information about his care, even as he "constantly complained about, and sought medical treatment for" the unremitting pain in his right foot. JA24. Nor did Defendants implement any interim measures to alleviate Mr. Clark's pain: "Nothing further was said or done by Nurse Hall" or any other member of the NCI medical staff. JA24. Instead, "Nurse Hall . . . and other members of the Neuse nursing staff"

---

tendon is a strong fibrous cord that connects the muscles in the back of your calf to your heel bone" that, if "t[orn] (rupture[d])," causes "an immediate sharp pain in the back of your ankle and lower leg that is likely to affect your ability to walk properly" and "often" requires "[s]urgery").

denied his "numerous" requests for "crutches, a cane, wheelchair, rimboot[2] [sic], etc., to assist [him] in moving about" the facility. JA25.

In May, Mr. Clark was transferred from NCI to the Lumberton Correctional Institution ("LCI"), where he currently is detained. JA24. Upon arrival, Mr. Clark submitted several sick call requests "pertaining to the injury to [his] right foot, the pain [he] was suffering, and the lack of medical . . . attention and treatment" he had received at NCI. JA24-25. Defendant T. Locklear, a security officer assigned to Mr. Clark's dormitory, "had [Mr. Clark's] sick call appointment cancelled without [his] approval," JA25, further delaying any possibility of appropriate medical care.

After repeated unsuccessful attempts by Mr. Clark to obtain care, defendant Nurse Soles responded to one of his many sick calls. JA25. Soles informed Mr. Clark that he "was scheduled to get an MRI," but provided no interim medical treatment. JA25. Despite "the constant pain and suffering caused by [his] injured right foot," which was by this time "grossly swollen, with virtually unbearable pain," Soles "gave [Mr. Clark] no medical treatment or medication," not even basic pain medication. JA25. Mr. Clark on "numerous occasions" requested ambulatory aids

[2] The Amended Complaint uses the term "rim boot" to refer to a walking boot commonly used to treat Achilles tendon injuries. *See Achilles tendon rupture: Diagnosis & treatment*, *supra* (noting that nonsurgical Achilles rupture treatment includes, in part, "[k]eeping the ankle from moving for the first few weeks, usually with a walking boot with heel wedges or a cast, with the foot flexed down").

like crutches or a boot, but LCI medical staff, including defendant Anna Demeka Bell, a nurse, denied these requests. JA25.

Over the next several months, Mr. Clark's condition worsened even further. He was "required to walk to and from everywhere [he] needed to be" and, as a result of being forced to use his injured foot without immobilization or mobility aids, became "frequently unable to walk or stand on his right foot due to the pain." JA25. Gradually, his "right heel became numb from the swelling" in his foot, which grew aggravated from "compelled use" without ambulatory aids or immobilization, and his "right knee became swollen." JA25. Eventually, the swelling extended from Mr. Clark's right foot "all the way to [his] calf" and "knee." JA25. He experienced "excruciating pain continuing without abatement" throughout this period. JA25.

Mr. Clark attended sick call appointments with various LCI nurses, including Bell, Regina Hooks, and Betty Clark.[3] These individuals, "via personal contact and physical interaction with [Mr. Clark] during sickcall [sic] appointments, etc., were each[] aware of [his] condition and [his] need for medical attention and treatment." JA25. But none provided any interim treatment to Mr. Clark—such as pain

[3] The Amended Complaint does not explicitly name Hooks or Clark as defendants, *see* JA21-23, but the original Complaint named Clark, JA7, and the district court inferred that Mr. Clark intended to name Hooks and Clark as defendants and found that the Amended Complaint failed to state claims against them, JA35-36 n.1. As a result, their dismissal from the case is properly before this Court.

medication or a pair of crutches—despite the obvious pain and swelling in his right leg. JA25. They instead "deliberately and indifferently[] chose to disregard such needs and to allow [Mr. Clark] to suffer needlessly." JA25.

Finally, in September 2021, nearly *six months* after his initial declaration of a medical emergency, Mr. Clark at last had an MRI at an external medical clinic. JA26. At a follow-up appointment, clinic staff informed Mr. Clark that the MRI showed he had torn his right Achilles tendon. JA26. The MRI also revealed that the tear had healed improperly because it was not promptly treated. JA26. Clinic staff advised Mr. Clark that, as a result, they are unable "to reverse (or correct)" the damage to his Achilles tendon. JA26. In addition, soon after his transfer to LCI, Mr. Clark fell "because of the strain caused by [his] inability to use [his] right leg" and suffered a second injury, this time to his left leg. JA26. "A coeval MRI . . . on [Mr. Clark's] left leg," undertaken at the same time as the MRI on his right leg, showed "a torn Achilles [tendon], a chipped bone in [his left] heel, and a fractured ankle containing bone chips." JA26.

Mr. Clark's now-irreversibly torn Achilles tendon has left him "with a permanent[,] painful limp" in his right leg and foot that will "often" require him to wear a boot "for support and ambulation" for the rest of his life. JA26.

B. Procedural History

In October 2021, Mr. Clark filed a pro se Complaint, alleging claims under 42 U.S.C. § 1983 for "deliberate indifference to [his] serious medical needs and the absence of appropriate medical attention and treatment."[4] JA10. The Complaint was submitted to the district court for initial review under 28 U.S.C. § 1915(e)(2)(B). *See* JA2; JA15. Five months later, the district court directed Mr. Clark to amend his complaint to "briefly describe how the defendants violated his rights under the standard [for deliberate indifference] set forth" in the order. JA17. The order to amend generally stated that the original Complaint did not "explain how the named defendants were aware of and disregarded his condition" or "allege the named defendants were directly responsible for the delays in care." JA17.

Mr. Clark responded to the district court's order in less than three weeks. Trying to comply with the court's instructions, he filed an Amended Complaint setting forth his deliberate indifference claims in greater detail. *See* JA19-30. The Amended Complaint named Nurses Hall and Soles as defendants, JA21-22, and identified Soles, Clark, Hooks, and Bell as "Nursing and/or Medical supervisor[s]," JA25. It included new, particularized allegations about Mr. Clark's interactions with Nurse Hall, JA24, Officer Locklear, and Nurse Soles, JA25, as well as the specific

[4] Mr. Clark also filed a grievance about prison staff's failure to treat his injury. JA25. That grievance process is complete. JA27.

allegation that Defendants learned about Mr. Clark's worsening condition through "personal contact and physical interaction" with him, JA25. The Amended Complaint also stated that Mr. Clark repeatedly requested crutches, a cane, or a similar ambulatory aid from Bell and Hall, among other Defendants, and that those requests were denied. JA24-25.

In August 2022, the district court sua sponte dismissed Mr. Clark's Amended Complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. JA31; JA39. The court acknowledged Mr. Clark's allegations that his right foot was swollen, that he suffered from excruciating daily pain, and that as a result of the untreated Achilles tear, he now has a permanent limp and chronic foot pain. JA32-33. It likewise acknowledged the allegations that Mr. Clark "declared a 'medical emergency'" that triggered examination by triage nurse Hall, "filed several sick call requests regarding his injury," and "requested crutches, a cane, a wheelchair, or specialized footwear to assist with ambulation." JA31-32. And the court accepted that Mr. Clark had not received basic care, like pain medication or an ambulatory aid, while he waited six months for a diagnostic MRI. *See* JA32. But the court still determined that these allegations were not enough for Mr. Clark to state his deliberate indifference claims. JA37. The court also found that, without an adequately pled constitutional claim, Mr. Clark could not "establish a claim for supervisory liability" and, in any event, had "fail[ed] to plead sufficient facts to

establish" such a claim. JA36. The court dismissed the § 1983 claims in the Amended Complaint with prejudice, without offering any chance to re-plead the allegations, in light of the court's conclusions.[5] JA37. Mr. Clark timely appealed. JA40.

SUMMARY OF THE ARGUMENT

I. To state a claim for deliberate indifference in violation of the Eighth Amendment, a plaintiff must allege both an objectively serious medical need and prison officials' subjective deliberate indifference to that need. *Hixson*, 1 F.4th at 302; *Iko v. Shreve*, 535 F.3d 225, 241 (4th Cir. 2008). The Amended Complaint easily satisfies both prongs. Mr. Clark alleges that Defendants examined his torn Achilles tendon several times and through this "personal contact and physical interaction with [him] . . . were each[] aware of [his] condition and [his] need for medical attention and treatment," JA25: His right leg was grossly swollen and he had noticeable difficulty walking for several months, JA24-25. Yet Defendants delayed diagnostic treatment for *almost half a year*, while failing to provide even the most rudimentary medical care in the meantime. JA24-25. This neglect caused "several months of unnecessary pain and suffering," and "a permanent[,] painful

[5] The district court also rejected Mr. Clark's state law and official capacity claims on jurisdictional and sovereign immunity grounds, respectively. JA37.

limp." JA26. It is difficult to imagine a more clear-cut instance of deliberate indifference to an urgent medical need.

II. The district court held to the contrary only by drawing a series of unreasonable inferences *against* Mr. Clark. Rather than read the allegations in the light most favorable to Mr. Clark, the district court searched the Amended Complaint for a level of detail not required of any pleading, let alone a pro se pleading. This approach was particularly inappropriate given the limited information available to Mr. Clark as an incarcerated person alleging harms inflicted by prison officials.

III. Had the district court applied the correct legal standards, it not only would have recognized Mr. Clark's deliberate indifference claim, but also would have allowed his supervisory liability claims to proceed past the pleading stage. Mr. Clark provided as much detail as he could about Defendants' failure, in their supervisory capacities, to ensure that their subordinates rendered appropriate medical care. His allegations are enough to merit discovery that will produce the information to supplement these claims.

IV. At an absolute minimum, the district court abused its discretion by dismissing the Amended Complaint with prejudice and thus denying Mr. Clark a chance to amend. This Court routinely grants such leeway to pro se litigants, and the district court did not point to any prejudice, bad faith, or futility that counsels against amendment.

For all of these reasons, the judgment of the district court should be reversed.

STANDARD OF REVIEW

This Court reviews de novo a district court's dismissal of a prisoner's pro se complaint under 28 U.S.C. § 1915(e)(2)(B)(ii), applying standards "the same as those for reviewing a dismissal under Federal Rule of Civil Procedure 12(b)(6)." *Martin v. Duffy*, 858 F.3d 239, 248 (4th Cir. 2017) (citation omitted).

The Court reviews the district court's denial of leave to amend for abuse of discretion. *Adbul-Mumit v. Alexandria Hyundai, LLC*, 896 F.3d 278, 293 (4th Cir. 2018); *see Scott v. Fam. Dollar Stores, Inc.*, 733 F.3d 105, 112 (4th Cir. 2013).

ARGUMENT

I. THE AMENDED COMPLAINT STATES A CLAIM OF DELIBERATE INDIFFERENCE TO MR. CLARK'S SERIOUS MEDICAL NEEDS

Mr. Clark's Amended Complaint alleges sufficient facts to state a claim of deliberate indifference to his serious medical needs. To survive dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In applying that standard, the Court "take[s] all facts pleaded as true, and draw[s] all reasonable inferences in [the plaintiff's] favor." *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014).

The dismissal standard requires only that plaintiffs "state[] simply, concisely, and directly events that, they allege[], entitle[] them to [relief]." *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014) (per curiam). "[N]o heightened pleading rule" applies to "plaintiffs seeking damages for violations of constitutional rights." *Id.* at 11. Pro se pleadings, especially when they raise constitutional claims, "are 'to be liberally construed,' and 'a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)).

The standard applicable to an Eighth Amendment claim for inadequate medical care is equally clear. "A prison official's deliberate indifference to an inmate's serious medical needs constitutes cruel and unusual punishment under the Eighth Amendment." *Hixson v. Moran*, 1 F.4th 297, 302 (4th Cir. 2021) (citation omitted); *see Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). Officials exhibit deliberate indifference when "denial of medical care" to a prisoner "result[s] in pain and suffering which no one suggests would serve any penological purpose." *Estelle*, 429 U.S. at 103.

A deliberate indifference claim under § 1983 has both an objective and a subjective element. *Hixson*, 1 F.4th at 302; *Iko v. Shreve*, 535 F.3d 225, 241 (4th Cir. 2008). First, the medical needs alleged by a plaintiff must be objectively

serious. *Hixson*, 1 F.4th at 302; *DePaola v. Clarke*, 884 F.3d 481, 486 (4th Cir. 2018). Second, a plaintiff must plausibly allege that the official acted with subjective deliberate indifference. *Hixson*, 1 F.4th at 302.

The allegations in the pro se Amended Complaint plead both elements and therefore state a claim that Defendants were deliberately indifferent to Mr. Clark's serious medical needs resulting from his torn Achilles tendon.

A. Mr. Clark Alleges An Objectively Serious Medical Need

The district court assumed without analysis that Mr. Clark had a serious medical need. *See* JA34-35. For good reason. A "serious medical need" is "a condition 'diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.'" *DePaola*, 884 F.3d at 486 (citation omitted).

That Mr. Clark's symptoms required a "doctor's attention" would have been obvious to any lay person. As alleged, Mr. Clark suffered "extreme swelling and pain," JA24; *see* JA24-26, that made walking a struggle, JA25, and ultimately led to "a permanent[,] painful limp," JA26. And Mr. Clark's injury was eventually diagnosed as a torn Achilles tendon, JA26, which plainly qualifies as objectively serious. *See Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016) (en banc) (recognizing that "an Achilles tendon rupture is an objectively serious condition").

It is indisputable that the Amended Complaint plausibly alleges an objectively serious medical need.

B. Mr. Clark Alleges That Defendants Were Deliberately Indifferent

The Amended Complaint also plausibly alleges that Defendants acted with subjective deliberate indifference towards Mr. Clark's ruptured Achilles tendon. To satisfy this prong, a plaintiff must allege that the defendant prison official "subjectively knew of and disregarded an excessive risk to the inmate's health or safety." *Hixson*, 1 F.4th at 302 (citing *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014)); *see Farmer v. Brennan*, 511 U.S. 825, 837 (1994). "[A] factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Farmer*, 511 U.S. at 842; *see Thorpe v. Clarke*, 37 F.4th 926, 935 (4th Cir. 2022). An official's disregard for an excessive risk to an inmate may be reflected in, among other forms of inaction, (1) a failure to provide adequate interim care and (2) a failure to promptly diagnose an inmate's medical condition. The allegations in the Amended Complaint show both types of deliberate indifference. Reversal is warranted if the Court agrees that either is evident on the face of the Amended Complaint.

1. Mr. Clark States A Claim That Defendants Did Not Adequately Respond To His Serious Medical Needs

The Amended Complaint adequately pleads Defendants' inaction to treat Mr. Clark's torn Achilles tendon, which alone establishes a cognizable Eighth

Amendment claim. This Circuit has long recognized, in accord with *Estelle v. Gamble*, that "a prison official's '[f]ailure to respond to an inmate's known medical needs raises an inference [of] deliberate indifference to those needs.'" *Scinto v. Stansberry*, 841 F.3d 219, 226 (4th Cir. 2016) (alterations in original) (citation omitted); *see Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

That inference is plainly warranted here. The Amended Complaint unambiguously alleges that Defendants were aware of Mr. Clark's injury through personal contact with him. And the Amended Complaint alleges that Defendants failed to respond to this known medical need in two ways: (1) by refusing to provide pain relief and (2) by declining to give Mr. Clark any form of ambulatory aid, a basic corrective medical device.

The Amended Complaint provides more than sufficient facts to infer that Defendants were aware of Mr. Clark's serious medical need. A plaintiff may rely on "'circumstantial evidence,'" including his "contact" with prison officials, to plead "that 'a prison official had the requisite knowledge of a substantial risk'" to his health or safety. *Thorpe*, 37 F.4th at 935-36 (quoting *Farmer*, 511 U.S. at 842). Mr. Clark explicitly alleges that Nurses Hooks, Clark, and Bell "via personal contact and physical interaction with [him] during sickcall [sic] appointments, etc., were each[] aware of [his] condition and [his] need for medical attention and treatment." JA25.

The Amended Complaint also makes plain that each of the Defendants came into direct personal contact with Mr. Clark in responding to his sick call requests. Nurses Bell, Soles, Halls, Hooks, and Clark all received complaints of his injury during his sick call appointments. JA24-25. Mr. Clark's medical needs should have been obvious to Defendants during these evaluations, given that he alleges that (1) he experienced severe pain beginning in March 2021 and repeatedly reported this pain to Defendants, JA24; (2) he had increasing difficulty walking on his injured foot, JA25; (3) upon a basic visual inspection, his right foot was swollen from his first medical emergency in March 2021, JA24; and (4) his injury became even more obvious as the swelling eventually spread from his right foot up to his right calf and knee, JA25. *See, e.g.*, *Thorpe*, 37 F.4th at 935 (holding that defendants' "daily contact" with plaintiffs made it "more than plausible" that they were aware of "the severe harms Plaintiffs ha[d] been suffering"). Based on these allegations, an inference that Defendants were aware of Mr. Clark's serious medical need is plainly warranted.

The Amended Complaint also alleges that, notwithstanding their awareness of Mr. Clark's serious medical need, Defendants failed to respond. In cases of apparent medical need, prison officials must take interim steps to relieve an inmate's immediate suffering, even if that suffering is symptomatic of a more complicated medical problem, to avoid creating an excessive risk to the inmate's health and

safety. *Jehovah v. Clarke*, 798 F.3d 169, 174-75, 181-82 (4th Cir. 2015) (alleged pattern of "acknowledging only some of [the plaintiff's] symptoms, ignoring test results . . . , and failing to improve [plaintiff's] condition" established claim of deliberate indifference based on excessive risk).[6] And this Court has held, in particular, that "[f]ailure to take minimal measures to treat a severe foot injury" like Mr. Clark's states "an [E]ighth [A]mendment claim." *Wilkins v. Corr. Med. Sys.*, 928 F.2d 400, 1991 WL 34999, at *2 (4th Cir. 1991) (unpublished table decision) (per curiam); *see Johnson v. Hardin County*, 908 F.2d 1280, 1284-85 (6th Cir. 1990) (alleged failure to provide pain medication, crutches, and bedding to inmate with compound foot fractures defeated summary judgment for defendants on deliberate indifference claim). Providing timely, adequate care in a case like this is particularly important given that the associated risks of doing nothing were plain: leaving Mr. Clark's pain untreated would lead to his continued suffering, while failing to immobilize his ankle would only worsen his discomfort and his mobility problems. *See, e.g.*, *Petties*, 836 F.3d at 726, 732. Still, Defendants inexplicably failed to

[6] *See also Smith v. Smith*, 589 F.3d 736, 739 (4th Cir. 2009) (failure to provide weekly treatment for foot infection as prescribed); *Griffin v. Mortier*, 837 F. App'x 166, 171 (4th Cir. 2020) (per curiam) (allegations that nurse failed to treat an inmate's ear pain, nasal bleeding, and confusion after a seizure stated a deliberate indifference claim); *Hotchkiss v. David*, 713 F. App'x 501, 505 (7th Cir. 2017) (per curiam) (finding at the pleading stage that "[i]f [plaintiff's] knee, hip, and leg pain could be easily fixed with a heel insert or special shoes" as alleged, "a 16-month delay could have violated his constitutional rights").

provide *any* interim care to address these risks while Mr. Clark awaited diagnosis, which amounts to deliberately indifferent disregard for Mr. Clark's health and safety. In particular, the Amended Complaint alleges that Defendants here failed to take even two "minimal measures" to address Mr. Clark's needs: (1) providing pain relief and (2) giving Mr. Clark any form of ambulatory aid, a basic corrective medical device.

On the first, time and again, courts have found that failure to provide basic pain relief to a prisoner who needs it qualifies as deliberate indifference. *See, e.g.*, *Boretti v. Wiscomb*, 930 F.2d 1150, 1154-56 (6th Cir. 1991) (reversing summary judgment for defendant nurse who refused to dress incarcerated plaintiff's wound or provide pain medication); *Aldridge v. Montgomery*, 753 F.2d 970, 972-73 (11th Cir. 1985) (reversing directed verdict for defendant officer who failed to provide pretrial detainee plaintiff an ice pack and aspirin to treat pain from an inch-and-a-half-long bleeding cut); *Harden v. Green*, 27 F. App'x 173, 178 (4th Cir. 2001) (per curiam) (plaintiff's "sworn assertions that [the Correctional Care] withheld pain medication for three days satisfied his burden" at summary judgment). But here, Defendants Hall and Soles, along with other members of the NCI and LCI medical staff, "gave [Mr. Clark] no . . . medication to alleviate the constant pain and suffering," while Hooks, Clark, and Bell "disregard[ed] [his] needs" for "medical attention and

treatment" and "allow[ed] him to suffer needlessly." JA24-25. This inexplicable failure by Defendants is a quintessential example of deliberate indifference.

On the second, Defendants did not provide any ambulatory aid—like a boot or crutches—to immobilize Mr. Clark's ankle, reduce his pain, and improve his mobility. The failure to provide basic corrective medical devices likewise shows deliberate indifference. *See, e.g.*, *Shakka v. Smith*, 28 F.3d 1210, 1994 WL 319217, at *3 (4th Cir. 1994) (unpublished table decision) (per curiam) (holding defendants' failure to provide plaintiff with a wheelchair would amount to deliberate indifference at summary judgment, assuming a serious medical need); *Large v. Wash. Cnty. Det. Ctr.*, 915 F.2d 1564, 1990 WL 153978, at *1 (4th Cir. 1990) (unpublished table decision) (per curiam) (recognizing, in review of prison officials' failure to provide a hearing aid to an inmate with permanent hearing loss, that "the failure to provide comparable basic corrective/medical devices may amount to deliberate indifference"); *LaFaut v. Smith*, 834 F.2d 389, 392-93 (4th Cir. 1987) (failure to furnish handicap-accessible restroom for paraplegic inmate). But Defendants Hall, Bell, Hooks, and Clark, along with other members of the NCI and LCI medical staff, rejected Mr. Clark's "numerous requests" for "crutches, a cane, wheelchair, rimboot [sic], etc." to take the pressure off his injured ankle, which was "grossly swollen" and caused "extreme," worsening pain. JA24-25. These allegations, too, would alone be enough to make out a deliberate indifference claim.

The fact of Mr. Clark's ultimate Achilles diagnosis makes the inadequacy of Defendants' response to his injury even clearer. A typical course of treatment for a torn Achilles tendon "is to immobilize the ankle, put it in a non-weight bearing status, and prescribe anti-inflammatory drugs and passive stretching exercises." *Petties*, 836 F.3d at 731. In other words, a doctor typically provides a patient "with a splint, boot, cast, or other device that would immobilize his foot," *id.* at 726, and prescribes, at a minimum, over-the-counter pain medication like Tylenol or Motrin. Both measures alleviate interim pain during the healing process; immobilization also promotes proper long-term healing of the torn tendon. *See id.* at 732.

The en banc Seventh Circuit applied these medical standards to review a doctor's treatment of a prisoner suspected to have a ruptured Achilles tendon in *Petties*. The doctor in that case did not provide "any sort of cast" to the plaintiff-inmate during the six weeks he waited to see a specialist, before an MRI confirmed the torn Achilles diagnosis. *Id.* at 727, 732-33. The court held that this raised a question of fact about whether the doctor's inaction to immobilize the plaintiff's ankle "was the result of negligence or deliberate indifference." *Id.* at 733. In other words, the inference of deliberate indifference arising from the doctor's failure to provide an appropriate ambulatory aid was strong enough to defeat a motion for summary judgment. *Id.*

Mr. Clark's allegations, taken as true, show that he experienced a much *more* extreme deprivation of medical care than did the plaintiff in *Petties*. As in *Petties*, Defendants did not provide any immobilization aids to Mr. Clark. *See* JA25. But while Mr. Petties at least received "crutches, ice, and Vicodin" while he awaited evaluation by a specialist, *Petties*, 836 F.3d at 726, Defendants did not offer Mr. Clark any similar ambulatory support or even Tylenol. If the failure to provide a splint was enough for a claim of deliberate indifference to survive summary judgment in *Petties* despite the much more substantial care that the plaintiff there received, Mr. Clark's allegations that he received no treatment for six months state a plausible claim for relief at the dismissal stage.[7]

2. Mr. Clark States A Claim That Defendants Intentionally Delayed His Access To Necessary Medical Care

The Amended Complaint also alleges sufficient facts to state a claim for deliberate indifference based on the delay Defendants caused in Mr. Clark's medical care. "In *Estelle*, the Supreme Court endorsed" the theory "that delayed medical treatment can constitute a manifestation of deliberate indifference." *Smith v. Smith*, 589 F.3d 736, 739 (4th Cir. 2009). Delay reaches the level of deliberate indifference

[7] Each medical-staff defendant was capable of providing Mr. Clark with this basic care, and thus contributed to the months-long period in which Mr. Clark received no appropriate treatment at all. Discovery will establish the specific extent of each individual's liability, but at this preliminary stage, the Amended Complaint sufficiently alleges that no medical staff defendant took any prompt action to render care.

"where the delay itself places the prisoner at 'substantial risk of serious harm,' such as where the prisoner's condition deteriorates markedly or the ailment is of an urgent nature." *Moskos v. Hardee*, 24 F.4th 289, 298 (4th Cir. 2022). A delay that "unnecessarily prolong[s] an inmate's pain" also clears the deliberate indifference bar. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010); *see Perez v. Fenoglio*, 792 F.3d 768, 774-75, 777 (7th Cir. 2015) (holding that plaintiff-inmate stated deliberate indifference claim where prison officials did not stitch a hand wound promptly).

Under these criteria, the facts set forth in the Amended Complaint plead a deliberately indifferent delay. Mr. Clark plausibly alleges that he waited nearly six months for a diagnostic MRI and any appropriate treatment for his torn Achilles tendon. He also recounts how often he sought medical treatment from Defendants during that time and how long he waited for any follow-up about the recommended MRI. *See supra* at 4-9. Combined with Defendants' failure to provide basic corrective measures during this period, the delay in diagnosis and treatment by a specialist caused nearly *half a year* of needless, debilitating pain. And it caused the injury to heal improperly and leave Mr. Clark with a "permanent[,] painful limp." JA26. "[T]here is nothing [medical staff] can do to reverse (or correct)" this damage. JA26. The six-month delay, then, not only placed Mr. Clark at a substantial risk of serious harm, but in fact created such harm.

These allegations clearly sufficed to state a deliberate indifference claim under governing precedent. The circumstances surrounding Mr. Clark's delayed treatment, as alleged, plausibly suggest that Defendants' six-month delay in providing timely and appropriate care both "prolonged" Mr. Clark's agony, *see McGowan*, 612 F.3d at 640, and led the condition of his torn Achilles tendon to "deteriorate[] markedly" and irreversibly, *Moskos*, 24 F.4th at 298. Indeed, when reviewing delays in treatment of similarly acute, urgent injuries, this Circuit has held delays of far less than six months harmful enough to state a claim of deliberate indifference. *See, e.g.*, *Loe v. Armistead*, 582 F.2d 1291, 1296 (4th Cir. 1978) (holding that alleged delay of twenty-two hours in treating a broken arm pled deliberate indifference under *Estelle*); *Smith*, 589 F.3d at 737, 740 (same concerning two- or three-week delay in supplying medication for bleeding, peeling feet); *Harden*, 27 F. App'x at 178 (three-day withholding of post-surgical pain medication). The allegations in the Amended Complaint thus supply more than enough facts that, if proven, would give rise to an inference of deliberate indifference on the part of Defendants.

In short, the Amended Complaint states a claim based on both Defendants' inadequate immediate response to his medical needs and the six-month delay in his receiving a diagnosis. Either alone would be enough to establish an Eighth

Amendment violation, and, taken together, this case reflects an obvious—and egregious—example of deliberate indifference.

II. THE DISTRICT COURT ERRED BY APPLYING THE WRONG LEGAL STANDARD TO THE PRO SE AMENDED COMPLAINT AND FAILING TO DRAW ALL INFERENCES IN MR. CLARK'S FAVOR

The district court found that the pro se Amended Complaint failed to state a deliberate indifference claim only because it applied an erroneously heightened legal standard and failed to draw reasonable inferences in Mr. Clark's favor. These flaws in the district court's analysis are reversible error.

A. The District Court Erred Even Under The Generally Applicable Dismissal Standard

The district court erred as a matter of law under the generally applicable dismissal standard it purported to employ. Although the court purported to "accept[] all well-pled facts as true and construe[] these facts in the light most favorable to the plaintiff," JA33 (quoting *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009)), it did not carry out that responsibility in its review of the Amended Complaint. This omission by the court constitutes reversible error for two reasons.

First, rather than construe the facts pled in the light most favorable to Mr. Clark, the district court parsed the language of Mr. Clark's allegations in search of extraneous detail the court considered necessary to state a § 1983 claim. The district

court described the severity of Mr. Clark's injury, noting allegations in the Amended Complaint that his right foot was "'grossly swollen, with virtually unbearable pain,'" that "he often was unable to stand or walk on the injured foot," and that as a result of the untreated tear to his Achilles tendon, he "has a permanent limp, endures chronic foot pain, and . . . must wear a 'rim boot' for ambulation." JA32-33 (citation omitted). The court also acknowledged that the Amended Complaint alleged Mr. Clark had never received basic care for his right-foot injury, in particular, that "medical staff denied" Mr. Clark's requests for "crutches or a wheelchair to assist with ambulation," and Soles "did not provide plaintiff with medical treatment for his foot." JA32. And the district court recounted the timeline of Mr. Clark's efforts to obtain treatment for his injury as explained in the Amended Complaint, including the delays between his initial medical emergency appointment in March 2021, his May 2021 x-ray, and his September 2021 MRI. JA31-33.

Yet the district court determined that Mr. Clark still had not done enough to state his deliberate indifference claim by demanding an impossible level of specificity. *See* JA34-35. For example, the court noted repeatedly that Mr. Clark "fail[ed] to allege specifically" Defendants were "aware of a serious medical need," *see* JA34, JA36, even as the dismissal order acknowledged Mr. Clark's allegations that Defendants "saw" him, JA34, and "'via personal contact and physical interaction with [him] . . . , were each, aware of [his] condition and [his] need for

medical attention and treatment,'" JA35-36 (quoting JA25). Given that Mr. Clark was seeking treatment for a torn Achilles tendon that, as the court acknowledged, left his right leg "grossly swollen" from foot to knee and left Mr. Clark "often . . . unable to stand or walk on the injured foot," JA32 (quoting JA25), his need for medical care would have been readily apparent to personnel interacting with him.

The district court similarly faulted Mr. Clark for his failure to identify "specific actions defendants took . . . that amounted to deliberate indifference." JA36; *see* JA35. Yet, as the court recounted, Mr. Clark alleged that various defendants (1) "refused his requests for a wheelchair, crutches, and other medical devices"; (2) "cancelled his sick call requests"; (3) "did not provide . . . medication to alleviate his pain and suffering"; and (4) did not schedule him for an MRI until September 2021, six months after his March 2021 injury. JA32, JA34-35. If these allegations are not specific enough to make out a deliberate indifference claim, it is not clear what exactly a pro se prisoner must allege to seek relief.

Second, the district court not only failed to construe the Amended Complaint in Mr. Clark's favor, but also did not even accept all pled facts as true. As to Hall, the district court improperly construed the Amended Complaint as alleging that she "saw plaintiff on the day he declared medical emergency [in March 2021]" and "promptly ordered an x-ray on the same day." JA34. The Amended Complaint in fact says only that Mr. Clark "was at that time, purportedly scheduled for an x-ray

sometime in April." JA24. The district court inferred from this statement (1) that an x-ray was scheduled when Hall saw Mr. Clark and (2) that Hall herself ordered the x-ray. *See* JA34-35. But the allegation is more consistent with the inference that the medical staff did *not* schedule an X-ray for April, as Mr. Clark alleges they claimed, given that "the x-ray was not completed until sometime in May." JA24.

The district court's analysis as to Locklear likewise reflects two misapplications of the legal standard. The dismissal order found that Mr. Clark's allegations that Locklear "cancelled his sick call requests" were "belied by the very next sentence in the amended complaint," alleging that Soles, Hooks, Clark, and Bell eventually saw Mr. Clark and so any cancellations by Locklear did not "prevent[] plaintiff from seeking medical care." JA35. But to reach this conclusion, the district court appears to have improperly discredited the allegation that Locklear cancelled Mr. Clark's medical appointments, despite its duty to "take all facts pleaded as true." *Jackson*, 775 F.3d at 178. And, in any event, the fact that medical staff *eventually* evaluated Mr. Clark does not mean that Locklear was not responsible for delaying Mr. Clark's treatment. Indeed, the only reasonable inference from the allegation that Locklear cancelled requests for treatment was that it did cause such a delay, since each cancellation would have required Mr. Clark to submit new requests and thus slowed the overall process of him obtaining care. The district court's contrary conclusion that Mr. Clark's receipt of some treatment at some point after his injury

rendered Locklear's alleged conduct harmless thus reflects a favorable inference draw in *Defendants'* favor—precisely the opposite of what the district court should have done.

The district court's dismissal of Mr. Clark's Amended Complaint based on a heightened pleading standard that imposed a greater burden on Mr. Clark at the pleading stage is reversible error. *See, e.g.*, *Mays v. Sprinkle*, 992 F.3d 295, 304-05 (4th Cir. 2021) (reversing dismissal of deliberate indifference claims and rejecting defendants' calls to "discount the inferences to be drawn" from certain factual allegations because "on a motion to dismiss, [the court] cannot rely on facts not found in the complaint or draw inferences in the [defendants'] favor"); *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 426-27 (4th Cir. 2015) (holding that district court erred by imposing at the dismissal stage a "heightened pleading requirement," under which it "adopt[ed] defendants' characterizations" of disputed facts and "dr[e]w[] unsurprisingly adverse inferences against [the plaintiff] based on" those characterizations).

B. The District Court Disregarded The Rule Of Liberal Construction

The district court also erred by disregarding the rule of liberal construction that guides review of pro se pleadings. Courts are "required to interpret . . . *pro se* complaint[s] liberally," *Sause v. Bauer*, 138 S. Ct. 2561, 2563 (2018) (per curiam); *see Bing v. Brivo Sys., LLC*, 959 F.3d 605, 618 (4th Cir. 2020) (citing *Erickson*, 551

U.S. at 94), and, in applying this guidance, read pro se pleadings "to raise the strongest arguments that they suggest," *Martin v. Duffy*, 977 F.3d 294, 298 (4th Cir. 2020) (citation omitted). These instructions apply with full force to the screening of complaints under 28 U.S.C. § 1915(e)(2)(B). *See Hill v. O'Brien*, 387 F. App'x 396, 398 (4th Cir. 2010) (per curiam).

The rule of liberal construction "allows courts to recognize claims despite various formal deficiencies." *Wall v. Rasnick*, 42 F.4th 214, 218 (4th Cir. 2022). This result is particularly important, and liberal construction thus "particularly appropriate where, as here, there is a pro se complaint raising civil rights issues." *Smith*, 589 F.3d at 738 (quoting *Loe*, 582 F.2d at 1295); *see also DePaola*, 884 F.3d at 486 (same). Thus, this Court has long "cautioned" district courts against "elevat[ing] form over substance" when "construing pro se complaints," *Hairston v. DVA, Reg'l VA Off. Martinsburg*, 841 F. App'x 565, 568 (4th Cir. 2021); *see, e.g.*, *Caldwell v. U.S. Dep't of Educ.*, 816 F. App'x 841, 842 (4th Cir. 2020) (per curiam) ("[I]t is the substance of [pro se] pleadings . . . that is determinative . . . .").

In view of this well-established framework for review, a district court's failure to liberally construe a pro se complaint is reversible error. *See Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977); *see also Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 471, 474-77 (2d Cir. 2006) (per curiam); *Torres v. Miami-Dade Cnty.*, 734 F. App'x 688, 689 (11th Cir. 2018) (per curiam). Likewise, when "a liberally

construed pro se complaint is susceptible to different readings" of varying breadth, the district "err[s] in assuming" that a narrower interpretation under which the complaint fails to state a claim is necessarily the correct one. *Tyree v. United States*, 814 F. App'x 762, 769 (4th Cir. 2020) (per curiam).

Further, a plaintiff's status as "an unrepresented incarcerated litigant" is "of considerable significance" to the evaluation of a pro se complaint, as courts owe such plaintiffs "'special solicitude.'" *Ceara v. Deacon*, 916 F.3d 208, 213 (2d Cir. 2019) (citation omitted). This policy accounts for the "informational disadvantage" prisoners necessarily face, *Alston v. Parker*, 363 F.3d 229, 233-34 & n.6 (3d Cir. 2004), which "may prevent them from pleading the full factual predicate for their claims," *Spruill v. Gillis*, 372 F.3d 218, 236 n.12 (3d Cir. 2004). It "is far more difficult for a prisoner to write a detailed complaint than for a free person to do so, and again this is not because the prisoner does not know the law but because he is not able to investigate before filing suit." *Billman v. Ind. Dep't of Corr.*, 56 F.3d 785, 789-90 (7th Cir. 1995). Inmates face stark information asymmetries: they cannot conduct informal investigations available to other plaintiffs, cannot interview witnesses, and cannot carry out effective discovery. These difficulties result not only from their status as pro se litigants, but also from the reality that "prisons and judges are extremely nervous about sharing information with prisoners." Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1611 (2003). As a result, it

is not "an adequate discharge of judicial duties to turn away a prisoner because confinement has prevented him from preparing what may well be a meritorious complaint." *Billman*, 56 F.3d at 790.

Despite the wealth of precedent explaining its obligations when evaluating pro se complaints, the district court did not even *mention* the rule of liberal construction, and instead made clear it was simply applying the standard applicable to non-pro se petitions under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *See, e.g.*, JA33, JA37.

And, as the discussion above underscores, the review that the district court undertook was anything but liberal. Rather than read the Amended Complaint "to raise the strongest arguments [it] suggest[s]," *Martin*, 977 F.3d at 298 (citation omitted), the district court relied on technicalities and insisted on an unreasonable level of detail and specificity that is plainly not feasible for an unrepresented incarcerated litigant. That approach was flatly incompatible with this Court's precedents and ratcheted *up* the pleading requirements, rather than relaxed them.

Further, under the liberal-construction framework, this relaxed treatment should extend not only to Mr. Clark's claims against the Defendants whose conduct is the focus of this brief, but also to his claims against LCI Associate Warden Jacqueline Smith and the LCI and NCI "nursing staff" named in the Amended Complaint, JA21, JA23. Mr. Clark made good-faith efforts to identify Defendants

and describe their actions with specificity. Discovery will enable more precise identification of nursing staff members and Smith's role in Mr. Clark's medical care; allowing Mr. Clark's claims to proceed to that exploratory stage and then amend his complaint is appropriate in view of his inability to otherwise obtain more information. *See, e.g.*, *Valentin v. Dinkins*, 121 F.3d 72, 75 (2d Cir. 1997) (explaining that the general requirement that a complaint must identify all defendants is "relaxed" in pro se actions, "particularly . . . where the plaintiff is incarcerated, and is thus unable to carry out a full pre-trial investigation").[8]

In short, the Amended Complaint alleges more than sufficient facts to state a claim that Defendants' conduct violated the Eighth Amendment. The district court's decision to the contrary was deeply misguided and should be reversed.

III. THE AMENDED COMPLAINT STATES A SUPERVISORY LIABILITY CLAIM

The Amended Complaint also adequately alleges a supervisory liability claim against Defendants in their supervisory capacities. The district court did not consider Mr. Clark's supervisory liability claim in any detail before concluding that

[8] *See also Clinkscales v. Pamlico Corr. Facility Med. Dep't*, 238 F.3d 411, 2000 WL 1726592, at *2 (4th Cir. 2000) (unpublished table decision) (per curiam) ("[W]here a pro se litigant alleges a cause of action which may be meritorious against persons unknown, the district court should afford him a reasonable opportunity to determine the correct person or persons against whom the claim is asserted, . . . and direct or permit amendment of the pleadings . . . ."); *McNeil v. Corcoran*, 168 F.3d 482, 1999 WL 12965, at *2 (4th Cir. 1999) (unpublished table decision) (per curiam) (similar).

he had not stated a deliberate indifference claim and therefore could not state a supervisory liability claim. JA36. If the Court reverses the district court's ruling as to individual liability, its ruling as to supervisory liability should also be vacated.

In any event, if this Court considers the issue anew, the Amended Complaint plausibly alleges supervisory liability. To state a claim for supervisory liability under § 1983, a plaintiff must show that (1) the supervisor "knew that his subordinate 'was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury'"; (2) the supervisor's "response showed 'deliberate indifference to or tacit authorization of the alleged offensive practices'"; and (3) "there was an 'affirmative causal link' between his action and the constitutional injury." *King v. Rubenstein*, 825 F.3d 206, 224 (4th Cir. 2016) (quoting *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994)).

The detailed allegations in the Amended Complaint of a months-long pattern of improper medical care at two correctional institutions plainly satisfy these standards. First, Mr. Clark alleges that Nurses Hooks, Clark, Soles, and Bell held "various supervisory positions," for example, "Nursing and/or Medical supervisor." JA25. And as discussed above, these individuals had direct knowledge of Mr. Clark's condition and ongoing lack of access to care through personal contact and sick call appointments. JA25; *see supra* at 16-23. Further, as the supervisory Defendants watched Mr. Clark's condition deteriorate over several months, they

were on notice that neither they nor their subordinates had given him the medically necessary treatment. *See, e.g.*, *Thorpe*, 37 F.4th at 934-35. Second, the supervisory Defendants' subsequent failure to ensure that prison medical staff provided appropriate treatment amounts to "tacit authorization" of the incompetent medical care Mr. Clark received. *See King*, 825 F.3d at 224 (citation omitted). And third, NCI and LCI medical staff's months-long inaction to treat Mr. Clark led to unnecessary pain and suffering, as well as a permanent disability. *See supra* at 16-23.

Discovery is, of course, needed to know more about Defendants' actions in their supervisory roles that Mr. Clark was not privy to—such as communications between prison officials about what medical treatment to prescribe to Mr. Clark, or whether to authorize an MRI. But the Amended Complaint's allegations reflect all the information Mr. Clark could possibly know about these supervisors' knowledge of and involvement in his treatment, and are enough to raise a plausible inference of supervisory liability—particularly under the rule of liberal construction. *See Martin*, 977 F.3d at 300-01; *Billman*, 56 F.3d at 790 (recognizing that prisoners face obstacles in writing detailed complaints because they are "not able to investigate before filing suit").

The Court should also allow Mr. Clark's supervisory liability claim against LCI Associate Warden Jacqueline Smith to proceed. The Amended Complaint

alleges that Smith "was directly responsible for assuring that Nurses Clark, Hooks, Sales, and Bell and the entire medical staff" performed their duties "regarding the provision of medical services" to LCI inmates. JA26. According to Mr. Clark, Smith's decision to "acquiesce to the indifference of her subordinate staff" led to his "continuous pain, suffering, and ultimate deformity." JA26. If proven, these allegations would satisfy the elements of a supervisory liability claim. *See King*, 825 F.3d at 224. Mr. Clark therefore should get the chance to develop a greater understanding of Smith's role in her subordinates' failures to treat his torn Achilles tendon beyond the pleading stage.

IV. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING LEAVE TO AMEND

Even if the Court determines that the Amended Complaint did not contain sufficient plausible allegations, this Court should hold that the district court erred by denying the Amended Complaint with prejudice, depriving Mr. Clark of a chance to amend. "It is this Circuit's policy to liberally allow amendment in keeping with the spirit of Federal Rule of Civil Procedure 15(a)," *Galustian v. Peter*, 591 F.3d 724, 729 (4th Cir. 2010), and leave to amend "should generally be granted," *Adbul-Mumit v. Alexandria Hyundai, LLC*, 896 F.3d 278, 293 (4th Cir. 2018). Moreover, "if a pro se complaint contains a potentially cognizable claim, the plaintiff should be given an opportunity to particularize his allegations." *King*, 825 F.3d at 225 (citing *Coleman v. Peyton*, 340 F.2d 603, 604 (4th Cir. 1965) (per curiam)). Thus, the Court

routinely modifies district courts' dismissals of pro se complaints with prejudice, including dismissals under 28 U.S.C. § 1915(e)(2)(B), to allow plaintiffs a chance to amend and particularize their allegations. *See, e.g.*, *Larrimore v. Hooks*, 289 F. App'x 576, 577 (4th Cir. 2008) (per curiam) ("Because [the pro se plaintiff] may be able to particularize his complaint to state non-frivolous claims arising from the events described in the complaint, we modify the district court's order to reflect that the dismissal [under 28 U.S.C. § 1915(e)(2)(B)] is without prejudice . . . ." (citing *Coleman*, 340 F.2d at 604)).[9]

District courts may deny leave to amend only "when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Adbul-Mumit*, 896 F.3d at 293 (quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986)). The district court, however, did not identify any of these factors in denying Mr. Clark a chance to amend his complaint, *see* JA37, and none apply to the circumstances of this case.

[9] *See also Clinkscales*, 2000 WL 1726592, at *2 (holding that district court abused its discretion by dismissing without leave to amend a pro se complaint that "was somewhat vague" but "allege[d] a cause of action which may be meritorious against persons unknown" and remanding); *Laboke v. City of Fairmont*, 208 F.3d 209, 2000 WL 265627, at *1 (4th Cir. 2000) (unpublished table decision) (per curiam) (remanding to "allow the [pro se plaintiffs] an opportunity to clarify these potentially cognizable [§ 1983] claims and for further proceedings as required"); *McNeil*, 1999 WL 12965, at *2 (similar).

First, amendment is not prejudicial to Defendants. Defendants never entered an appearance in the district court and never responded to either the original or the Amended Complaint. Proceedings have not even gone so far as an answer or motion to dismiss. Defendants would plainly suffer no prejudice from being required to respond to a Second Amended Complaint—their first such response in this litigation—without the benefit of a sua sponte dismissal. *Cf. Laber v. Harvey*, 438 F.3d 404, 428 (4th Cir. 2006) (finding no prejudice from amendment because "[a]lthough the case progressed to summary judgment," defendants had "conducted no significant discovery").

Second, Mr. Clark has not shown bad faith in seeking to litigate his claims. This lawsuit is the first lawsuit that Mr. Clark has ever filed. JA28. And when the district court directed him sua sponte to amend his complaint within twenty-one days, he promptly complied and took pains to follow the court's instructions for a proper amendment. *See supra* at 9-10; JA17; JA19.

Third and finally, amendment would not be futile. As discussed, Mr. Clark has already alleged detailed facts stating claims for deliberate indifference and supervisory liability in violation of the Eighth Amendment under 42 U.S.C. § 1983, and—to the extent that the district court identified areas in which the Amended Complaint could have provided more detail—additional allegations easily could satisfy these requests for more factual color. For example, the district court found

that Mr. Clark did "not offer specific allegations" that "Soles was aware of and disregarded a need for immediate treatment beyond the MRI." JA35. But it did not point to any reason why it believed Mr. Clark would be unable to expand on the allegations in the Amended Complaint on these points. *See, e.g.*, JA25 (alleging Soles responded to one of Mr. Clark's sick calls and failed to treat him). If this Court concludes Mr. Clark needed to make more particularized allegations, he should be allowed to do so.

A Second Amended Complaint also would provide the first meaningful opportunity for Mr. Clark to amend his complaint. The district court's order to amend recited the legal standard for a deliberate indifference claim in highly technical terms and did not explain with any specificity the allegations that would be required for Mr. Clark to state a plausible claim. *See* JA15-18. Mr. Clark nonetheless took pains to comply with the court's directive in his pro se Amended Complaint, but he had no way of knowing at that time how much detail the district court would demand. With the benefit of the district court's dismissal order and guidance from this Court, he could now submit a responsive Second Amended Complaint.

CONCLUSION

For all these reasons, the judgment of the district court should be reversed.

Dated: December 5, 2022

Respectfully submitted,

s/Samir Deger-Sen
Samir Deger-Sen
Frances Chapman*
Dori Rahbar*
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-4619

David M. Shapiro
Roderick & Solange MacArthur Justice Center
Northwestern Pritzker School of Law
375 E. Chicago Avenue
Chicago, IL 60611
(312) 503-0711

James A. Tomberlin
LATHAM & WATKINS LLP
555 11th Street, NW,
Suite 1000
Washington, DC 20004
(202) 637-2141

Marissa Marandola
LATHAM & WATKINS LLP
200 Clarendon Street
Boston, MA 02116
(617) 948-6000

Counsel for Appellant Reginald Clark

**Pending Admission to NY Bar*

REQUEST FOR ORAL ARGUMENT

Appellant Reginald Clark requests oral argument in this case. This case presents important questions about the pleading requirements applicable to pro se prisoners bringing civil rights claims and the degree of specificity to which a deliberate indifference claim must be pled. Appellant believes oral argument would aid the Court in its consideration of these issues.

Dated: December 5, 2022

Respectfully submitted,

*s/*Samir-Deger Sen
Samir Deger-Sen
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-4619

Counsel for Appellant
Reginald Clark

CERTIFICATE OF COMPLIANCE WITH RULE 32(G)

Counsel for Appellant Reginal Clark hereby certifies that:

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Local Rule 32(b). The brief contains 9,722 words (as calculated by the word processing system used to prepare this brief), excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the type-face requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times New Roman style font.

Dated: December 5, 2022

Respectfully submitted,

*s/*Samir Deger-Sen
Samir Deger-Sen
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200

Counsel for Appellant
Reginald Clark

CERTIFICATE OF SERVICE

I, Samir Deger-Sen, hereby certify that on December 5, 2022, the foregoing Opening Brief for Appellant Reginald Clark was filed with the clerk's office for the United States Court of Appeals for the Fourth Circuit via the Court's CM/ECF system.

Pursuant to the Court's Updated Access & Operating Procedures in Response to COVID-19, dated June 11, 2021, the paper copy requirement of Local Appellate Rule 31(d) has been suspended. Appellant will expeditiously provide a paper copy of the foregoing brief at the Court's direction.

s/ Samir Deger-Sen
Samir Deger-Sen
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200

Counsel for Appellant
Reginald Clark