No. 23-40385

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JEWELL THOMAS,

Plaintiff–Appellant,

v.

ANDREW NINO, GAGE RIVAS, MATTHEW HERRERA,
ELBERT HOLMES, ISACC KWARTENG, AND BRYAN COLLIER,

Defendants–Appellees.

On Appeal from a Final Judgment of the United States District Court
for the Southern District of Texas, Corpus Christi Division
Case No. 2:22-cv-252, Hon. Nelva Gonzales Ramos

THE BRIEF OF THE NATIONAL POLICE ACCOUNTABILITY PROJECT AS AMICUS CURIAE SUPPORTING APPELLANT AND REVERSAL

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Nov. 29, 2023

CERTIFICATE OF INTERESTED PERSONS

(1) Case No. 23-40385, *Thomas v. Nino et. al.*

(2) The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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CORPORATE DISCLOSURE STATEMENT

Amicus is a nonprofit organization. It has no parent corporations, and no publicly held corporation owns any portion of any of it. *Amicus* does not have a financial interest in the outcome of this litigation.

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INTERESTS OF THE AMICUS CURIAE[1]

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately 550 attorney members practicing in every region of the United States, including more than 15 in Texas and more than 30 in states within the Fifth Circuit. Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police and correction officer accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as amicus curiae in cases, such as this one, presenting issues of particular importance for its members and their clients.

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[1] *Amicus* files this brief with the consent of Appellant. Because of the posture of the case, there was no opposing party in the District Court or Appellee in this Court. No Party has contributed to the preparation of this brief; it has been entirely prepared by *Amicus* or its counsel.

INTRODUCTION

This case presents an important recurring issue for incarcerated civil rights litigants. Mr. Thomas, as he explains in the Opening Brief, had his civil rights claim dismissed at the screening stage in the District Court based upon that Court's view that his physical injuries were not more-than-*de minimis* for the purposes of Section 1997e(e) of the Prison Litigation Reform Act (PLRA). Although Mr. Thomas should have gone forward under even that more-than-*de minimis* standard based upon his serious injuries, the standard itself is wrong. The text of the PLRA contains no such amplification of the physical injury requirement, and the legislative purpose, as revealed by the Congressional Record, was not to screen out any claims of purportedly *de minimis* physical injuries. Although some courts, including this one, have imposed that standard on Eighth Amendment excessive force claims, that framework has never properly applied to other types of prison civil rights claims. And notably, the Supreme Court has even repudiated that framework for excessive force claims themselves; that Court's decision in *Wilkins v. Gaddy*, 559 U.S. 34 (2010), flatly rejected the premise this Court relied on in *Siglar v. Hightower*, 112 F.3d 191 (5th Cir. 1997), when applying a more-than-*de minimis* physical injury standard to an excessive force claim. Unfortunately, the ongoing failure to recognize *Siglar*'s abrogation has resulted in inconsistent application of the PLRA in district courts—some courts have correctly allowed claims with *de minimis* physical injuries to proceed, while others have barred claims involving objectively more serious injuries that nevertheless did not (in those courts' view) meet the heightened standard. This arbitrary more-than-*de minimis* standard not only bars the underlying meritorious

claims, but, because of the PLRA's three strikes provision, possibly prevents other future meritorious claims, too. This Court should reverse and bring its precedent into alignment with *Wilkins* to provide useful guidance for consistent application at the PLRA screening stage in district courts within the Circuit.

ARGUMENT

I. There is no textual basis or legislative purpose in the PLRA for dismissing an incarcerated plaintiff's claims for failure to meet a purported severity threshold as to his physical injury.

A. The District Court contravened the plain text of the PLRA and applied an unsupported interpretation of the "physical injury" requirement by requiring allegations of a more-than-*de minimis* injury.

To satisfy the PLRA's pleading requirements, an incarcerated plaintiff alleging violations of his rights while in custody must claim the alleged violations caused him some kind of physical injury. This "physical injury" requirement is rooted in Subsection (e) of the PLRA, which states: "No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act." 42 U.S.C. § 1997e(e). Put another way, § 1997e(e) prohibits incarcerated individuals from filing suits seeking compensatory damages for *purely* mental or emotional harms endured in custody. *See Harper v. Showers*, 174 F.3d 716, 719 (5th Cir. 1999) ("The Prison Litigation Reform Act requires a physical injury before a prisoner can recover for *psychological* damages.") (emphasis added); *Robinson v. Page*, 170 F.3d 747, 748 (7th Cir. 1999) ("The domain of the statute is

limited to suits in which [only] mental or emotional injury is claimed . . . It might be possible as a linguistic matter to read the statute to mean that a physical injury must be shown if any mental or emotional injury is alleged, even if another type of injury is also alleged. But it would not be a sensible reading.").

The PLRA does not establish any severity threshold for the physical harm alleged. To the contrary, the PLRA does not even define, let alone qualify, "physical injury" at all. *See generally* 42 U.S.C. § 1997e. The more-than-*de minimis* standard imposed by the District Court below stems not from § 1997e(e) itself but from an overruled body of caselaw interpreting § 1997e(e)'s "physical injury" requirement. *See Siglar*, 112 F.3d. But *Siglar*'s holding was not only already limited to Eighth Amendment excessive force claims at the time it was decided, and thus should never have been applied to other kinds of PLRA claims at all; it has also since been expressly abrogated even in that context by the Supreme Court. *See Wilkins*, 559 U.S. at 39. This Court should reverse the District Court's improper imposition of a more-than-*de minimis* physical injury standard to Mr. Thomas's complaint.

1. The more-than-*de minimis* physical injury requirement has never applied outside the Eighth Amendment excessive force context.

The District Court's more-than-*de minimis* physical injury requirement stems from this Court's decision in *Siglar*, 112 F.3d, which defined § 1997e(e)'s "physical injury" requirement in the specific context of an Eighth Amendment excessive force claim. Noting "the absence of any definition of 'physical injury'" in § 1997e(e), the *Siglar* Court held "that the well-established Eighth Amendment standards [would]

guide [its] analysis in determining whether a prisoner has sustained the necessary physical injury to support a claim for mental or emotional suffering." *Id.* at 193. The Court drew these "well-established Eighth Amendment standards" from *Hudson v. McMillian*, 503 U.S. 1 (1992), which held that a plaintiff alleging Eighth Amendment excessive force must demonstrate a more-than- "'*de minimis* use[] of force"— unless "'the use of force [wa]s . . . a sort repugnant to the conscience of mankind'"—but he need not show he suffered any "'significant injury'" as a result of that force. *Id.* (quoting *Hudson*, 503 U.S. at 10). The *Siglar* Court interpreted *Hudson* to require an allegation of physical *injury* that "need not be significant" but "must be more than *de minim[i]s*" to satisfy the Eighth Amendment's pleading standards. *Id.*[2] The *Siglar* Court then held that an incarcerated plaintiff must also plead a more-than-*de minimis* physical injury to satisfy § 1997e(e) screening. *Id.*

Given the *Siglar* Court's exclusive reliance on the pleading threshold for an Eighth Amendment excessive force claim, its more-than-*de minimis* definition of § 1997e(e)'s "physical injury" prerequisite is not readily applicable to claims that do not allege unconstitutional use of force. As this Court recently observed, it is not clear that the *Siglar* "line of cases matters when[,]" for example, the incarcerated plaintiff "is bringing an ADA [(Americans with Disabilities Act)] claim that does not require a

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[2] Although several circuits similarly wrongly adopted a more-than-*de minimis* physical injury requirement, they rejected the *Hudson* opinion as the basis for such a requirement. *See Oliver v. Keller*, 289 F.3d 623, 628 (9th Cir. 2002) (discussing *Siglar* and specifically rejecting that court's location of the requirement in *Hudson*); *see also Harris v. Garner*, 190 F.3d 1279, 1286-87 (11th Cir. 1999), *vacated by Harris v. Garner*, 197 F.3d 1059 (11th Cir. 1999), *reinstated in part on reh'g by Harris v. Garner*, 216 F.3d 970 (11th Cir. 2000) (en banc).

showing of excessive force or deliberate indifference." *Buchanan v. Harris*, 2021 U.S. App. LEXIS 29621, at *5 (5th Cir. Oct. 1, 2021). Thus, even to the extent that *Siglar* established the correct test for a § 1997e(e) "physical injury" in the context of an Eighth Amendment excessive force claim, it did not hold that an incarcerated plaintiff must demonstrate a more-than-*de minimis* physical injury to support non-excessive force claims, including claims brought under the ADA and even Eighth Amendment claims of deliberate indifference to serious medical needs. *See id*. Other circuits have similarly refused to apply the physical injury requirement in a manner so untethered from the text of the PLRA; as a plurality of this Court's sister circuits have held, § 1997e(e)'s "physical injury" requirement cannot lawfully be imposed on certain constitutional claims *at all*—let alone in its restrictive more-than-*de minimis* form. *See, e.g., Robinson*, 170 F.3d at 748; *Canell v. Ligthner*, 143 F.3d 1210, 1213 (9th Cir. 1998) (quoting § 1997e(e)); *Aref v. Lynch*, 833 F.3d 242, 265 (D.C. Cir. 2016); *Wilcox v. Brown*, 877 F.3d 161, 170 (4th Cir. 2017); *King v. Zamiara*, 788 F.3d 207, 213 (6th Cir. 2015).

Even this Court has recognized the great error of indiscriminately applying *Siglar*'s standard to dispose of complaints subject to the PLRA in their entirety. Like other circuits that have applied § 1997e(e)'s "physical injury" requirement to every PLRA claim, regardless of the nature of the alleged violation, this Circuit has recently clarified that the failure to allege a "physical injury" only bars suits seeking compensatory damages, not those requesting equitable relief, punitive damages, or nominal damages. *See, e.g.*, *Higgins v. Navarrete*, No. 20-20341, 2022 U.S. App. LEXIS 4831, at *8 (5th Cir. Feb. 23, 2022). *Higgins* affirmed the dismissal of an

incarcerated plaintiff's First Amendment claim that only sought compensatory damages because "[t]he Prison Litigation Reform Act of 1995 . . . 'prevents prisoners from seeking compensatory damages for violations of federal law where no physical injury is alleged.'" *Id.* (quoting *Mayfield v. Tex. Dep't of Crim. Just.*, 529 F.3d 599, 605 (5th Cir. 2008)). But it also explained that "punitive and nominal damages, unlike compensatory damages, require no such physical injury." *Id.* at *9 (citing *Hutchins v. McDaniels*, 512 F.3d 193, 197-98 (5th Cir. 2007)); *see also Clarke v. Stalder*, 121 F.3d 222, 227 n.8 (5th Cir. 1997) (noting § 1997e(e)'s prohibition against "[m]onetary relief" for purely mental or emotional injury).[3]

These various restrictions on *Siglar*'s holding, in addition to the plain text of § 1997e(e) and the District Court's failure to liberally construe Mr. Thomas's *pro se* complaint to include claims for equitable relief, provide a sufficient basis for reversing the District Court's atextual application of the more-than-*de minimis* physical injury requirement. But, as discussed below, binding precedent of the U.S. Supreme Court expressly rejecting the more-than-*de minimis* physical injury requirement in even the more limited context of an excessive force claim mandates reversal of the District Court's order.

[3] The Second and Eleventh Circuits apply the same rule. *See, e.g.*, *Thompson v. Carter*, 284 F.3d 411, 419 (2d Cir. 2022) (construing *pro se* plaintiff's First Amendment claim liberally and granting plaintiff the opportunity to amend his complaint "to make clear" whether he sought injunctive and/or declaratory relief); *Hoever v. Marks*, 993 F.3d 1353, 1358 (11th Cir. 2021) ("Understood properly, . . . § 1997e(e) does not bar punitive damages in the absence of physical injury.").

2. The Supreme Court has expressly rejected the more-than-*de minimis* physical injury requirement for purposes of an Eighth Amendment excessive force claim, abrogating *Siglar* and its progeny.

Thirteen years after *Siglar*, the Supreme Court decided *Wilkins v. Gaddy*, 559 U.S. 34 (2010). *Wilkins* expressly rejected the interpretation of *Hudson v. McMillian*, 503 U.S. 1 (1992), that the *Siglar* Court relied on to reach its greater-than-*de minimis* physical injury requirement. As discussed above, the *Siglar* Court interpreted *Hudson* to require a more-than-*de minimis* physical injury to prevail on an Eighth Amendment excessive force claim. 112 F.3d at 193. The Court then extrapolated *Hudson*'s supposed more-than-*de minimis* requirement to define "physical injury" for the purposes of the PLRA. *Id.*

But in *Wilkins*, the Supreme Court made clear that *Hudson* did not establish a threshold severity requirement for physical injuries giving rise to an Eighth Amendment excessive force claim. 559 U.S. at 39. In *Wilkins*, the Court reversed the Fourth Circuit, which, like the *Siglar* Court, interpreted *Hudson* to require a greater-than-*de minimis* physical injury. The Supreme Court did not mince words in rejecting this interpretation of *Hudson*:

> The Fourth Circuit's strained reading of *Hudson* is not defensible. This Court's decision did not, as the Fourth Circuit would have it, merely serve to lower the injury threshold for excessive force claims from 'significant' to 'non-*de minimis*'—whatever those ill-defined terms might mean. Instead, the Court aimed to shift the core judicial inquiry from the extent of the injury to the nature of the force—specifically, whether it was nontrivial and was applied maliciously and sadistically to cause harm. To conclude, as the District Court did here, that the absence of some arbitrary quantity of injury requires automatic dismissal of an excessive force claim improperly bypasses this core inquiry.

Id. (cleaned up).

As the Supreme Court explained, *Hudson*'s statement that the Eighth Amendment generally requires a showing of more-than-*de minimis* physical *force* does not translate to a required showing of more-than-*de minimis* physical *injury*: "Injury and force . . . are only imperfectly correlated, and it is the latter that ultimately counts" in an excessive force claim. *Id*. at 38. The focus on the severity of the injury incurred over the type of force used—and the purported reason for using such force—would improperly preclude "[a]n inmate who is gratuitously beaten by guards" from "pursu[ing] an excessive force claim merely because he ha[d] the good fortune to escape without serious injury." *Id*. The "purportedly *de minimis* nature of [the plaintiff's] injuries," which, like Mr. Thomas's, included bruising, "back pain, and other injuries requiring medical treatment," did not justify dismissal of the plaintiff's excessive force claim. *Id*. Under *Hudson* and *Wilkins*, the core inquiry of an Eighth Amendment excessive force claim is not the severity of the injury incurred but whether the force was used "'maliciously and sadistically' rather than as part of a 'good-faith effort to maintain or restore discipline.'" *Id*. (quoting *Hudson*, 503 U.S. at 7).

In repudiating any more-than-*de minimis* physical injury requirement for Eighth Amendment excessive force claims, the *Wilkins* Court necessarily rejected *Siglar*'s foundational assumption. The District Court's application of *Siglar*'s more-than-*de minimis* physical injury requirement cannot be reconciled with *Hudson* and *Wilkins*. And, in imposing this undefined and arbitrary *de minimis* requirement, the District Court reached the very conclusion the *Wilkins* and *Hudson* Courts found intolerable:

it dismissed, with prejudice, the claims brought by an incarcerated individual who was deprived of medical care, who was maliciously handcuffed despite his known disability, and who experienced severe physical pain as a result.

This Court has already noted, in dicta, that "*Hudson* was concerned with a *de minimis* use of force showing, not a *de minimis* injury." *Brown v. Lippard*, 472 F.3d 384, 386 n.1 (5th Cir. 2006). But it declined to decide whether an incarcerated plaintiff is required, under *Hudson* and *Siglar*, to demonstrate a more-than-*de minimis* injury. *Id*. *Wilkins* has since answered this open question with a resounding "no." Indeed, this Court has since twice come close to correctly recognizing *Siglar*'s abrogation by *Wilkins* entirely, even within the excessive force context. *See Perez v. Collier*, No. 20-20036, 2021 U.S. App. LEXIS 27011, at *7-9 (5th Cir. Sep. 8, 2021) (quoting *Wilkins*, 559 U.S. at 37-38, and observing that "the Supreme Court has squarely rejected a threshold requirement of a significant or non-de-minimis injury"); *Payne v. Parnell*, 246 F.App'x 884, 888-89 (5th Cir. 2019) (per curiam) (unpublished) (rejecting argument that *de minimis* injury should bar claim, in reference primarily to the gratuitous nature of the use of force rather than the injury).

This Court should formalize this rule rather than circling around it in unpublished opinions. It should not only reverse the District Court's dismissal of Mr. Thomas's claims, but should also take this opportunity to clarify that, in light of *Wilkins*, the Eighth Amendment and the PLRA do not require incarcerated plaintiffs to allege a more-than-*de minimis* physical injury to survive a motion to dismiss.

B. Dismissing Mr. Thomas's claims on this basis does not advance the legislative goals of the PLRA.

A heightened physical injury requirement is neither grounded in any legislative purpose nor even marginally tailored to the PLRA's purported goal of reducing frivolous lawsuits. The Congressional Record does not reveal any specific legislative intent behind the physical injury requirement, as § 1997e(e) was never the focus of debate on the legislation.[4] Accordingly, courts and scholars have consistently opined that the provision was included to advance the same overarching purpose of the PLRA—limiting frivolous claims. *See, e.g, Royal v. Kautzky*, 375 F.3d 720, 729-30 (8th Cir. 2003) (Heaney, J., dissenting); *Shaheed-Muhammad v. Dipaolo*, 393 F.Supp.2d 80, 107 (D. Mass. 2005). And assessed against this purpose, the more-than-*de minimis* addition to the physical injury requirement does not serve the purpose any more than the baseline requirement as it exists in the text does.

The PLRA's sponsors introduced the bill to target a specific breed of prisoner litigation. Proponents of the bill exhaustively detailed the types of frivolous lawsuits the PLRA was intended to discourage and quickly dispose of, including sharing examples of real lawsuits to illustrate the purpose behind the bill's provisions. For instance, when PLRA sponsor Senator Bob Dole introduced an early version of the bill, he explained that "prisoners have filed lawsuits claiming such grievances as insufficient storage locker space, being prohibited from attending a wedding

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[4] James E. Robertson, *A Saving Construction: How to Read the Physical Injury Rule of the Prison Litigation Reform Act*, 26 S. ILL. U. L.J. 1, 2-4 (2001); Jennifer Winslow, Comment, *The Prison Litigation Reform Act's Physical Injury Requirement Bars Meritorious Lawsuits: Was It Meant To?* 49 UCLA L. REV. 1655, 1659 (2001).

anniversary party, and yes, being served creamy peanut butter instead of the chunky variety they had ordered." 141 Cong. Rec. S14,570. Proponents of the bill also relied on "Top Ten Frivolous Filings Lists" submitted by a group of state attorneys general in advocating for its passage. These lists highlighted cases in their states that included being denied the right to play cards after 10pm, or purportedly losing a recording contract after a cassette tape was confiscated.[5]

Conversely, the Congressional Record makes clear that the PLRA was not intended to foreclose meritorious challenges to constitutional violations. *See* Statement of Senator Orrin Hatch (R-UT), September 29, 1995, 141 Cong. Rec. S14,627 ("I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised. The legislation will, however, go far in preventing inmates from abusing the Federal judicial system."); *see also* Statement of Representative Charles Canady (R-FL), February 9, 1995, 141 Cong. Rec. H1480 ("These reasonable requirements will not impede meritorious claims by inmates but will greatly discourage claims that are without merit."). It was an explicit objective of the statute's framers to screen out frivolous cases without impeding meritorious claims. An atextual, heightened physical injury requirement in screening even claims that unambiguously involve some physical injury goes far beyond what Senators Hatch, Canady, or the state attorneys general supporting the bill viewed as the real problem.

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[5] 141 Cong. Rec. S14,629 (daily ed. Sept. 29, 1995); Adam Slutzky, *Totally Exhausted: Why A Strict Interpretation of 42 U.S.C. § 1997e(a) Unduly Burdens Courts and Prisoners*, 73 FORDHAM L. REV. 2289, 2296 n.47 (2005).

The way that the PLRA has generally applied to claims involving medical care further underscores the senselessness of the more-than-*de minimis* requirement. The Government's constitutional obligation to provide medical care to incarcerated persons dates back decades before Congress enacted the PLRA. *See Estelle v. Gamble*, 429 U.S. 97, 97 (1976). And denying the provision of medical care that causes a plaintiff pain while they wait for treatment is actionable even if it does not result in separate or new injuries. *See, e.g.*, *Newman v. Alabama*, 503 F.2d 1320, 1324 (5th Cir. 1974) (holding that two-day lapse in medical services after transfer could be actionable, noting such a lapse transgresses "the interdictions of the cruel and unusual punishment clause of the Eighth Amendment"); *Williams v. Edwards*, 547 F.2d 1206, 1217 (5th Cir. 1977) (involving a prison that violated the Eighth Amendment by delaying sick calls); *Galvan v. Calhoun Cty.*, 719 F.App'x 372, 374-75 (5th Cir. 2018) (per curiam) (unpublished) (holding that prisoner stated deliberate indifference claim where prison officials delayed his access to a doctor for three days and he suffered pain as a result); *Rodrigue v. Grayson*, 557 F.App'x 341, 342, 346 (5th Cir. 2014) (unpublished) (finding Eighth Amendment violation where prison did not provide treatment for stomach pain for several days). Given the established Eighth Amendment right to timely medical treatment and this Court's recognition that temporary pain that results from lack of treatment is sufficient to state such a claim, it is quite clear that the PLRA does not exclude—either in text or in purpose—claims based upon some purportedly insufficient level of physical injury, when such an injury occurs. Indeed, the state attorneys general's inclusion of a singular inadequate care claim in their "Top Ten Frivolous Filings Lists" is the exception that proves the

rule. *See Totally Exhausted*, 73 FORDHAM L.REV. at 2296 n. 47 (sole insufficient medical care case in "Top Ten" list involved plaintiff alleging he did not receive post-operative medical care because he refused to go to an infirmary without a television set).

Courts that have squarely addressed the scope of the physical injury requirement have generally respected Congress's intent and declined to interpret it to preclude otherwise meritorious claims. With respect to medical care cases, a number of courts—including the Supreme Court in *Wilkins*—have stressed that a significant injury is not necessary to satisfy § 1997e(e)'s physical injury requirement. *See, e.g.*, *Robinson*, 170 F.3d at 749 (declining to decide whether physical injury "must be a palpable, current injury (such as lead poisoning) or a present condition not injurious in itself but likely to ripen eventually into a palpable physical injury"); *Oliver*, 289 F.3d at 628; *Wilkins*, 559 U.S. at 38 ("An inmate who is gratuitously beaten by guards does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury."). In cases involving other claims, courts have completely dispensed of the physical injury requirement where it is irrelevant to the underlying constitutional violation, holding that requiring a physical injury in such a case would be inconsistent with Congress's intent. *See, e.g.*, *Aref*, 833 F.3d at 265 ("[W]e find it hard to believe that Congress intended to afford virtual immunity to prison officials even when they commit blatant constitutional violations, as long as no physical blow is dealt"); *Wilcox*, 877 F.3d at 170 (holding that deprivations of First Amendment rights are compensable injuries distinct from

mental or emotional injury); *Board v. Farnham*, 394 F.3d 469, 477 (7th Cir. 2005) (finding physical injury not required for conditions of confinement case).

In sum, neither the PLRA's text nor legislative purpose provide any support for courts to enlarge the physical injury requirement—for any claims brought by an incarcerated plaintiff, and for medical care claims, in particular. Congress did not intend to deter cases challenging the unconstitutional denial of medical treatment by enacting the PLRA. These claims often do not involve a significant physical injury, but nevertheless state a claim—and the increase of courts requiring plaintiffs to show not only a physical injury, but a sufficiently serious one, deters legitimate constitutional litigation and conflicts with the PLRA's explicit text and goals. This Court should reverse the District Court's dismissal of Mr. Thomas's claims and, in so doing, clarify that a more-than-*de minimis* physical injury standard is at odds with both the text and the purpose of the PLRA.[6]

[6] This Court's recent opinion in *Hamilton v. Dallas County*, 79 F.4th 494 (5th Cir. 2023) (en banc), serves as a helpful example of such a clarifying decision, in a similar situation where court-made precedent has imposed rules on litigants untethered to statutory text. In *Hamilton*, the Court overturned its longstanding precedent that had established an atextual limitation on Title VII claims, requiring plaintiffs to show a heightened level of harm caused by workplace discrimination. The *Hamilton* Court rejected that, explaining that the limitation had no textual basis in the statute, was at odds with congressional intent and Supreme Court precedent, and had improperly led to the dismissal of meritorious employment discrimination claims. *Id.* at 500-02. Where, as here, precedent diverges from statutory text, the Court can and does correct that error—even if the error is longstanding.

II. Atextually aggressive PLRA screening undermines incarcerated people's access to courts—in this case and in others.

The error that the District Court made in this case is, unfortunately, not an aberration. This Court should correct the error here and harmonize its precedent with the Supreme Court's in no small part because of how frequently potentially meritorious civil rights claims are wrongly dismissed at the PLRA screening stage. This improper dismissal happens in district courts across the Fifth Circuit and is especially common in cases just like this—where a district court confuses the Eighth Amendment force analysis and the PLRA physical injury requirement analysis to impose the more-than-*de minimis* standard upon allegations of injury. Some district courts, however, have correctly applied *Wilkins* to reject the more-than-*de minimis* requirement; those decisions underscore both the need for this Court to ensure consistency in "physical injury" screenings, and the fact that doing so does not implicate the text or purpose of the PLRA. Moreover, the practice of aggressively screening these cases causes other significant problems. Wrongly-exclusionary screening not only limits the ability of incarcerated people to get redress for the underlying cases that courts wrongfully dismiss, but, because of the PLRA three strikes rule, it also limits people's ability to get redress for future violations—including those where no court would question the quantum of physical injury alleged. This Court should hesitate to endorse the continued development of atextual doctrine considering these grave consequences.

A. Inconsistent district court screening practices post-*Wilkins* have resulted in dismissals of meritorious claims based upon the abrogated standard.

This case is just one of many similar cases involving meritorious claims wrongfully dismissed at the screening stage because of a purportedly not-serious-enough physical injury. This most commonly occurs in cases exactly like this one, where a district court relies on *Siglar* to dismiss claims in reference solely to the seriousness of the injury incurred rather than the amount, nature, or necessity of force used by defendants. *See, e.g.*, *Luong v. Hatt*, 979 F.Supp. 481 (N.D. Tex. 1997) (citing *Siglar* and dismissing based on purported requirement for an "observable or diagnosable medical condition requiring treatment by a medical care professional. . . Injuries treatable at home with over-the-counter drugs, heating pads, rest, etc., do not fall within the parameters of 1997e(e).");[7] *Hollins v. Larson*, No. 6:16-CV-00360-RC, 2019 U.S. Dist. LEXIS 45995, at *9 (E.D. Tex. Feb. 7, 2019) (dismissing complaint based solely on failure to allege a more-than-*de minimis* physical injury). But even in cases where the district court incorporates the amount of force into its analysis, courts still dismiss in substantial or primary reference to the purportedly insufficient physical injury. *See, e.g.*, *Gibson v. Fobbs*, No. H-03-3745, 2010 U.S. Dist. LEXIS 35382, at *5 (S.D. Tex. Apr. 11, 2010) ("Plaintiff has not stated an Eighth Amendment

[7] Several district courts have relied on *Luong* in making the same error. *See, e.g.*, *Brock v. Wright*, No. 4:15-CV-00065-JHM, 2018 U.S. Dist. LEXIS 36934, *4-5 (W.D. Ky. Mar. 7, 2018) (citing *Luong* and dismissing scratch on neck and two burn marks as *de minimis*); *Johnson v. Corr. Corp. of Am.*, No. 15-cv-2320, 2015 U.S. Dist. LEXIS 165099, *1-2 (W.D. La. Nov. 17, 2015) (holding a person's loss of the use of their hand for some time after an officer stepped on it no more than *de minimis*, citing *Luong*).

claim because his injuries were de minimis, and because he has not shown that the force used was repugnant to the conscience of mankind."); *Nash v. Chapa*, No. 2:18-CV-149-Z-BR, 2021 U.S. Dist. LEXIS 142052, at *7 (N.D. Tex. July 29, 2021) (dismissing after addressing possible justification for force and because "*most importantly*, Plaintiff suffered no injury from the use of force, with the exception of temporary pain caused by the chemical agent") (emphasis added). Whether the district court's analysis relies solely, primarily, or even just in part upon the atextual and improper more-than-*de minimis* physical injury requirement, that mistake of law results in the wrongful dismissal of possibly meritorious claims.

However, other district courts have correctly recognized the effect of *Wilkins* on *Siglar* and its progeny—and have avoided erroneous screening consistent with the text and purpose of the PLRA. In these cases, courts generally cite *Wilkins* to reject a purportedly only *de minimis* physical injury as a reason to kick an incarcerated plaintiff out of court. *See, e.g.*, *Pitman v. Collum*, No. 6:17cv321, 2018 U.S. Dist. LEXIS 163081, at *19 (E.D. Tex. Aug. 6, 2018) (categorizing plaintiff's physical injuries as *de minimis* but holding that, in light of *Wilkins*, the defendant "failed to show that he [wa]s entitled to summary judgment based on *de minimis* injuries");[8] *LeCompte v. Hendricks*, No. 22-1355, 2022 U.S. Dist. LEXIS 237114, at *8 (E.D. La. Dec. 19, 2022) (citing *Wilkins* and refusing to dismiss plaintiff's excessive force claim

[8] *Pitman* is similar to this case in a different way, however: like the district court here, the *Pitman* Court described as "*de minimis*" physical injuries that seem objectively more serious than that. *Id*. ("describing injuries that include a "red nose and face, a small laceration to his lower lip, a red and swollen eye, and a red/bloody sclera").

alleging nerve damage from gratuitous tightening of handcuffs). Some of these decisions, including in neighboring jurisdictions, involve objectively less serious injuries than those in the cases discussed in the prior paragraph. *See, e.g.*, *Coen v. Ga. Dep't of Corr.*, 2018 WL 4365503, *7 (M.D. Ga. Sept. 13, 2018) (allowing claims involving *de minimis* bruises and welts to go forward); *Talib v. Riedl*, 2016 WL 696082, *15 (M.D. Fla. Feb. 22, 2016) (describing "red and teary" eyes and other light injuries); *Simpkins v. Hall*, 2014 WL 6672788, *4 (M.D. Fla. Nov. 24, 2014) (involving a black eye and no other physical injuries).

Notably, the district court's proper application of *Wilkins* does not always redound to the benefit of incarcerated plaintiffs. Sometimes, the focus on reasonableness of force instead of the quantum of physical injury results in objectively serious injuries having no redress—essentially the inverse of the hypothetical in *Wilkins* itself, with avowedly excessive force but limited physical injuries, 559 U.S. at 38. *See Sanchez v. Griffis*, 569 F.Supp.3d 496, 512 (W.D. Tex. 2021) (granting summary judgment to defendants after "[c]onsidering the nature of the force used rather than the extent of the injury (which was horrific)," after discussing and applying *Wilkins*). But that makes good sense; for purposes of holding an officer accountable in a constitutional claim, what matters is the officer's use of force, not the result of that force, however significant it may be. As the *Wilkins* Court explained, the focus is on the "gratuitious beat[ing]" rather than the "serious injury"—or lack thereof. 559 U.S. at 38.

B. Wrongful screening not only prevents incarcerated civil rights plaintiffs from seeking redress for their screened claims but also limits their ability to bring meritorious claims in the future.

Overly aggressive screening has a separate, dangerous downstream effect. In practice, having to navigate complicated grievance processes and the PLRA's stringent requirements prior to filing already often bars incarcerated people with meritorious claims from ever having their day in court. *See, e.g.*, Margo Schlanger, Trends in Prisoner Litigation as the PLRA Approaches 20, 5 Correctional Law Reporter 69 (February/March 2017). But that effect is amplified for incarcerated litigants, especially *pro se* litigants, who see their claims dismissed at the PLRA screening stage, *see* 28 U.S.C. § 1915(e)(2); 28 U.S.C. § 1915A; 42 U.S.C. § 1997e(c)(1), often without prior notice or an opportunity to respond.[9] This is because screening-stage dismissals often result in summary affirmances on appeal, or no appeal at all. Simply put, such dismissals are often final. And because many screening-stage dismissals count as PLRA strikes, these final screening-stage dismissals and summary affirmances not only prevent incarcerated litigants from getting their claims heard on the merits, but often also bar the same litigants from having future, *unrelated* claims heard at all. *See, e.g.*, *Garrett v. Murphy*, 17 F.4th 419, 425 (3d Cir. 2021) (discussing PLRA strikes and the bar to filing a complaint *in forma pauperis* for any incarcerated litigant with three prior strikes). This Court should consider the

[9] *See, e.g.*, *Plunk v. Givens*, 234 F.3d 1128, 1129 (10th Cir. 2000) (upholding lower court's *sua sponte* dismissal where no hearing was provided); *Carr v. Dvorin*, 171 F.3d 115, 116 (2d Cir. 1999) (per curiam) ("The statute clearly does not require that process be served or that the plaintiff be provided an opportunity to respond before dismissal.").

effect of overly aggressive screening on future meritorious cases, on the way to reversing the lower court's decision and reinstating the complaint here.

CONCLUSION

For the foregoing reasons, in addition to the reasons in Appellant's Opening Brief, the judgment of the district court should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(a)(7)(C), I certify that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 5,630 words, including footnotes and excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 16.66.1, set in Century Schoolbook 12 point type.

/s/ Lauren Bonds

Lauren Bonds

CERTIFICATE OF SERVICE

I certify that on Nov. 29, 2023 this brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ Lauren Bonds

Lauren Bonds