No. 22-_____

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM SIMS,

Petitioner,

v.

ALEXIS FIGUEROA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has exercised its power to summarily vacate a lower court's decision when that decision "reflect[ed] a clear misapprehension" of the standards governing summary judgment. *See Tolan v. Cotton*, 572 U.S. 650, 659–60 (2014) (per curiam). In the case below, Petitioner submitted evidence that, for roughly twenty-one months at Suwannee Correctional Institution, he experienced persistent gastrointestinal bleeding and pain during bowel movements without receiving any meaningful medical care. The district court granted Respondent summary judgment on the basis that Petitioner had received minimally adequate treatment. The Eleventh Circuit affirmed. It stated that Petitioner "'was seen by Gastroenterology'" shortly after having been transferred to Suwannee, App. 3a, eventually received "treatment that caused the bleeding to subside," App. 10a–11a, and ultimately "responded well to 'routine' care," App. 14a. The question presented is:

Does the decision below, which misstates a summary judgment record and resolves factual disputes against a nonmovant, warrant summary reversal?

PARTIES TO THE PROCEEDING

Petitioner William Sims was the plaintiff in the U.S. District Court for the Middle District of Florida and the plaintiff-appellant in the U.S. Court of Appeals for the Eleventh Circuit.

Respondent Alexis Figueroa was the defendant in the U.S. District Court for the Middle District of Florida and defendant-appellee in the U.S. Court of Appeals for the Eleventh Circuit.

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INTRODUCTION

This Court has stepped in when a lower court clearly "failed to adhere to the axiom that in ruling on a motion for summary judgment, '[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.'" *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (per curiam) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). In the decision below, the Eleventh Circuit not only disregarded that axiom, but also relied on a clearly erroneous view of the record. The Eleventh Circuit so overstepped the bounds of a federal court's authority on summary judgment that this Court should summarily reverse.

Petitioner William Sims asserted that Respondent Alexis Figueroa exhibited deliberate indifference to Mr. Sims's rectal bleeding and pain during bowel movements for roughly twenty-one months while Mr. Sims was incarcerated at Suwannee Correctional Institution (between September 2017 and June 2019). Mr. Sims submitted sworn statements, reports from a hematologist-oncologist (Vernon Montoya), and other medical records regarding his persistent symptoms and urgent need for

a gastroenterologist's care. After a district court granted summary judgment for Dr. Figueroa, the Eleventh Circuit affirmed.

The Eleventh Circuit initially found that Mr. Sims took narcotics, which caused his bleeding, App. 2a, and that Mr. "Sims 'was seen by Gastroenterology'" in October 2017, App. 3a. The record does not support the first finding and plainly contradicts the second one. Yet the Eleventh Circuit refused to correct these obvious errors when Mr. Sims identified them in a petition for panel rehearing. *See* App. 46a–49a.

After providing a faulty description of the record, the Eleventh Circuit stepped into the shoes of a jury by resolving genuine disputes of material fact and drawing inferences in favor of the movant, Dr. Figueroa. The decision below credits some medical notes to find that Mr. Sims "required only 'routine' treatment," disregarding other medical records and testimony about Mr. Sims's "emergent" or "urgent" need for a gastroenterologist's care. *Compare* App. 4a, App. 10a–12a, App. 14a, *with* App. 128a, App. 137a, App. 148a. It draws inferences against Mr. Sims to decide that he had "little to no bleeding" after December 2017, never properly accounting for the sworn statements and medical records that a jury could accept as proof that Mr. Sims consistently experienced

those symptoms into June 2019. *Compare* App. 14a*, with* App. 114a–16a, App. 137a, App. 141a–46a, App. 148a. And its opinion crediting Dr. Figueroa for relying on his and "nurses' first-hand observations . . . to ignore the recommendations that Dr. Montoya made based on second-hand information," App. 11a, reflects an obvious factual error that went to the heart of a credibility contest only a jury could decide. Dr. Montoya performed three digital rectal examinations (between October 2017 and July 2018) to Dr. Figueroa's single one (in December 2017). *Compare* App. 114a–15a, App. 77a, App. 116a*, with* App. 4a, App. 12a.

The Eleventh Circuit's decision to play the role of fact-finder and its clear factual errors at the summary judgment stage demand this Court's attention. The decision below deprives Mr. Sims of his right to have a jury resolve the material disputes this case presents. And this Court should protect the integrity of the fact-finding process by exercising its "supervisory power" and summarily reversing the Eleventh Circuit's extreme departure from the summary judgment standard. *See* Sup. Ct. R. 10(a) (explaining that this Court may grant certiorari when a "court of appeals . . . has so far departed from the accepted and usual course of

judicial proceedings . . . as to call for an exercise of this Court's supervisory power").

OPINIONS BELOW

The decision of the U.S. Court of Appeals for the Eleventh Circuit (App. 1a–15a) is unreported. The order of the U.S. District Court for the Middle District of Florida is also unreported and available at App. 18a–34a.

JURISDICTION

The Eleventh Circuit, exercising jurisdiction under 28 U.S.C. § 1331, entered judgment on January 21, 2022, App. 17a, and denied Mr. Sims's timely petition for rehearing on March 1, 2022, App. 36a–37a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT FEDERAL PROVISIONS

The Eighth Amendment to the U.S. Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. VIII.

Section 1983 of Title 42 of the U.S. Code provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States . . . to

> the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983.

STATEMENT OF THE CASE

1. Mr. Sims began to suffer from "rectal bleeding and pain during bowel movements" in May 2017 while incarcerated at Hamilton Correctional Institution. *See* App. 74a; *see also* App. 62a–63a.[1] He underwent a colonoscopy in August 2017, had polyps removed, and "was ordered [to] return in eight (8) weeks for follow-up care." App. 62a; App. 75a. "Within a couple days" of the colonoscopy, Mr. Sims "began experiencing gross rectal bleeding." App. 62a. Before the eight weeks elapsed, Mr. Sims was transferred to Suwannee Correctional Institution, where Respondent Alexis Figueroa became his primary healthcare provider. App. 62a.

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[1] Because the lower courts resolved this case at the summary-judgment stage, this statement recites the facts from Mr. Sims's sworn filings and associated exhibits in the light most favorable to him. *See Tolan*, 572 U.S. at 651.

In September 2017, Mr. Sims told Dr. Figueroa about the "continuous rectal bleeding and excruciating pain" that he had been experiencing "during any bowel movement." App. 114a. Dr. Figueroa responded that "a consult to gastroenterology would be initiated." App. 62a; App. 114a. Dr. Figueroa submitted a request for a "1st post[-]op visit" for both a (1) "biopsy result" after the August polyp removal and (2) "plan of care" with a gastroenterologist. *See* App. 124a; App. 122a. Dr. Figueroa's request initially listed "Pending" underneath "Appointment Date." App. 124a. A line was then drawn through "~~Pending~~." App. 124a. And next to the crossed-out text is an abbreviation: "ATP," meaning "alternative treatment plan." App. 124a.

The next month, Mr. Sims had an appointment with Dr. Vernon Montoya, a hematologist-oncologist, who was managing a separate diagnosis of prostate cancer. App. 62a; App. 126a. During this visit, Mr. Sims expressed concern about not having received treatment for his "rectal bleeding and excruciating pain when attempting to have bowel movements." App. 114a–15a; App. 62a. Dr. Montoya performed a digital rectal exam and determined that Mr. Sims was "still bleeding." App. 115a; App. 126a; App. 62a–63a. Dr. Montoya then made his own request

for a gastroenterologist to see Mr. Sims. App. 126a. Dr. Montoya wrote: "It is unclear why the patient was ATP'd as he had a colonoscopy and he was found to have a polyp as well as hemorrhoids. The patient has continued [gastrointestinal] bleeding. Therefore, [gastrointestinal] follow up is actually appropriate. We will make a referral back to Gastroenterology." App. 126a; *see also* App. 128a (nurse's note referring to Dr. Montoya's "emergent referral for [follow-up with] gastro[enterology]").

The next day, Dr. Figueroa noted that Mr. Sims saw Dr. Montoya "for a follow-up on his prostate ca[ncer]." App. 128a. Dr. Figueroa then wrote: "No new changes in [treatment] plan ha[ve] been order[ed]" and "[follow-up] will cont[inue] on site." App. 128a.

Between October and December 2017, Mr. Sims submitted four sick-call requests for "gross rectal bleeding." App. 132a–35a. He noted in November that the bleeding still "[had] not been evaluated—nor ha[d] treatment been provided." App. 133a.

In December 2017, Mr. Sims had an appointment with Dr. Figueroa—the first since his initial September 2017 appointment. App.

68a; App. 115a; App. 130a.[2] Dr. Figueroa noted "rectal bleeding," that Mr. Sims had polyps removed during the August colonoscopy, and that an "inflamed hemorrhoid . . . could be the cause of the rectal bleeding." App. 130a. He provided a set of over-the-counter medicines: a tube of hydrocortisone cream for external use, a stool softener, and a fiber laxative. App. 63a; *see also* App. 76a (noting that Dr. Figueroa provided Colace, an over-the-counter stool softener).

The following month, Mr. Sims had another appointment with Dr. Montoya, the hematologist-oncologist treating his prostate cancer. App. 115a. Mr. Sims explained that the over-the-counter medicine he had received from Dr. Figueroa "was ineffective" for his "rectal pain and bleeding" during bowel movements. App. 115a. Dr. Montoya performed another digital rectal exam. App. 77a. And Dr. Montoya wrote, in part: "**We will re-consult Gastroenterology. This is urgent, due to possible** [**gastrointestinal**] **bleeding.**" App. 137a (emphasis in original).

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[2] Two days before that visit, Mr. Sims had submitted a formal administrative grievance regarding his need for treatment. *See* App. 68a–69a.

Later that month, Dr. Figueroa reviewed Dr. Montoya's report. App. 116a; App. 139a. Dr. Figueroa wrote: "Rectal bleeding already eval[uated] and discussed with patient. No further action until next onco[logy] app[ointment.]" App. 139a.

Mr. Sims requested medical help six more times through the summer of 2018. *See* App. 141a (January 31); App. 142a (February 6); App. 143a (March 13); App. 144a (April 16); App. 145a (April 23); App. 146a (September 11).[3] He saw Dr. Montoya twice more during this period. *See* App. 116a (July 5); App. 152a (October 4). In July 2018, Dr. Montoya performed another digital rectal exam, and Mr. Sims "was still experiencing rectal bleeding and excruciating pain at the touch." App. 116a. "Dr. Montoya became furious when he realized that [Mr. Sims] still had not seen a gastroenterologist" and told Mr. Sims that the prison's institutional healthcare provider "was trying to save money, not provide adequate medical care." App. 63a–64a; *see* App. 78a. Dr. Montoya submitted another gastroenterology request and wrote: "**We will again**

[3] At the end of February 2018, Mr. Sims filed an additional formal grievance. App. 91a.

refer him to Gastroenterology. This is urgent; to evaluate [**gastrointestinal**] **bleeding.**" App. 148a (emphasis in original).

Dr. Figueroa reviewed Dr. Montoya's July 2018 request and wrote that, "due to the fact that [a gastroenterologist] stated in [August 2017] that the cause of [the] rectal bleeding was an inflamed hemorrhoid[,] this could be handled on site." App. 150a. Dr. Figueroa also wrote that Mr. Sims "had no complaint at site of rectal bleeding." App. 150a.

In January 2019, Dr. Montoya submitted another request for Mr. Sims to see a gastroenterologist. App. 117a; App. 156a. Dr. Montoya diagnosed Mr. Sims with rectal bleeding and pain and sought an endoscopic procedure or a colonoscopy. App. 156a. Dr. Figueroa reviewed this request the next day. App. 117a. He wrote: "[Gastrointestinal] bleeding already address[ed] with patient." App. 158a. He then provided Mr. Sims a seven-day supply of an over-the-counter stool softener and suppositories. App. 79a.

Dr. Figueroa stopped being Mr. Sims's primary care provider in June 2019, after Mr. Sims was transferred out of Suwannee Correctional Institution. App. 117a. In March 2020, at a different facility, Mr. Sims saw a gastroenterologist. App. 118a; App. 160a. The gastroenterologist

performed an endoscopic procedure and a colonoscopy. App. 160a–61a. The gastroenterologist removed colon polyps, then diagnosed Mr. Sims with gastrointestinal bleeding and "severe hemorrhoids." App. 160a–61a. The gastroenterologist recommended a flexible sigmoidoscopy (an endoscopic procedure allowing a gastroenterologist to examine the rectum and lower colon) and a hemorrhoid banding procedure (a minimally invasive procedure for removing internal hemorrhoids). *See* App. 161a; *Flexible Sigmoidoscopy,* JOHNS HOPKINS MED., https://www.hopkinsmedicine.org/gastroenterology_hepatology/clinical_services/basic_endoscopy/flexible_sigmoidoscopy.html (last visited May 24, 2022); Healthwise Staff, *Rubber Band Ligation for Hemorrhoids*, MICH. MED., (Apr. 15, 2020), https://www.uofmhealth.org/health-library/hw212526.

2. Mr. Sims filed pro se a 42 U.S.C § 1983 suit asserting that Dr. Figueroa denied him treatment and a referral to a gastroenterologist who would have been capable of providing adequate diagnosis and treatment. App. 62a–64a. Mr. Sims sought, in relevant part, damages for an Eighth Amendment claim of deliberate indifference to his serious medical needs. App. 64a. After a district court denied Dr. Figueroa's motion to dismiss this claim, Dr. Figueroa filed a motion for summary judgment. App. 8a;

App. 96a. Dr. Figueroa asserted that Mr. Sims "received adequate medical care" and that the complaint's "allegations amount[ed] to, at most, a disagreement between [Mr. Sims] and Dr. Figueroa about [Mr. Sims's] treatment," not deliberate indifference. App. 103a–04a.

Mr. Sims filed a verified declaration in opposition that detailed his encounters with Dr. Figueroa as well as Dr. Montoya's attempts to have a gastroenterologist address Mr. Sims's bleeding and pain. App. 113a–18a. Mr. Sims also explained that, after his transfer to a new facility, he had an appointment with a gastroenterologist who performed an endoscopy and colonoscopy. App. 118a; App. 160a–61a. Mr. Sims attached numerous medical records to his declaration, including ten sick-call requests for care (submitted by Mr. Sims) and five requests for a gastroenterologist (submitted by Dr. Montoya). *See* App. 120a–61a.

The district court granted summary judgment for Dr. Figueroa. App. 34a. The court considered the record to demonstrate a "disagreement with [Dr.] Figueroa's treatment plan," not deliberate indifference. App. 32a. The court reached its conclusion after stating, in part, that Dr. Figueroa "on two occasion[s] requested a gastroenterology consultation for [Mr. Sims]." App. 31a. The court also reasoned that Dr.

Figueroa "regularly saw [Mr.] Sims and prescribed him medication." App. 32a.

3. Mr. Sims appealed, and the Eleventh Circuit appointed undersigned counsel. The Eleventh Circuit recited the summary judgment standard and affirmed. App. 9a–15a.

According to the Eleventh Circuit, Mr. "Sims took narcotics that caused constipation, gastrointestinal bleeding, and hemorrhoids," App. 2a, and "'was seen by Gastroenterology'" after arriving at Suwannee, App. 3a. The Eleventh Circuit also opined that, after Dr. Figueroa canceled an appointment for Mr. Sims to see a gastroenterologist in September 2017, Dr. Figueroa's nursing staff provided "medical treatment" and Mr. Sims's bleeding "lessened." App. 3a; App. 10a. The Eleventh Circuit next found that "after a test detected blood in [Mr.] Sims's stool" in December 2017, Dr. Figueroa "prescribed a conservative treatment that caused the bleeding to subside." App. 4a; App. 10a–11a. It also found that Mr. Sims had "little to no bleeding" after that point in time and "responded well to 'routine' care." App. 14a. And the Eleventh Circuit stated that Dr. Figueroa relied on "first-hand observations"—that he and nurses made—"to ignore the recommendations that Dr. Montoya

made based on second-hand information." App. 11a. Based on this view of the record, the Eleventh Circuit decided that Mr. "Sims failed to establish that Dr. Figueroa was deliberately indifferent to [Mr.] Sims's rectal bleeding" and affirmed the grant of summary judgment. App. 10a–14a.

4. Mr. Sims filed a petition for panel rehearing. He argued that the Eleventh Circuit's decision made clear factual errors and misapplied the summary judgment standard by drawing numerous inferences in Dr. Figueroa's favor and resolving genuine disputes of material fact. App. 44a–46a.

The Eleventh Circuit denied the petition for rehearing without explanation. *See* App. 37a.

REASONS FOR GRANTING THE WRIT

The decision below reflects an extreme departure from a federal court's proper role at summary judgment and calls for this Court's intervention. This case was not complicated. The Eleventh Circuit correctly recognized that a prison official exhibits "deliberate indifference to serious medical needs" by "intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *See Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976) (footnotes omitted); *see also* App. 10a. And Mr. Sims submitted evidence that he experienced twenty-one months of gastrointestinal bleeding and pain without ever receiving the type of treatment that a prior facility had prescribed before his transfer to Suwannee and that a hematologist-oncologist repeatedly requested after the transfer. This record reflected a classic dispute in which "witnesses on both sides" had "their own perceptions, recollections, and even potential biases," *Tolan*, 572 U.S. at 660. Such "genuine disputes are generally resolved by juries in our adversarial system." *Id.* Not in this case.

The Eleventh Circuit overstepped the bounds of a federal court's authority on summary judgment by reaching clearly erroneous factual

findings and usurping the role of the jury in resolving material factual disputes. It misstated the record of Mr. Sims's condition and treatment (or lack thereof), even finding that Mr. Sims actually went to a gastroenterology department after his transfer to Suwannee, *see* App. 3a—he never did. And rather than let a jury resolve whether Mr. Sims experienced gastrointestinal bleeding and pain for nearly two years at Suwannee, the Eleventh Circuit determined by itself that he experienced "little to no bleeding" and "responded well" after Dr. Figueroa provided two sets of over-the-counter medicines over the course of roughly twenty-one months. *See* App. 14a. The Eleventh Circuit plainly "neglected to adhere to the fundamental principle that at the summary judgment stage, reasonable inferences should be drawn in favor of the nonmoving party," *Tolan*, 572 U.S. at 660.

Although "'this Court is not equipped to correct every perceived error coming from the lower federal courts,'" it should "intervene here because the opinion below reflects a clear misapprehension of summary judgment standards in light of [this Court's] precedents." *See id.* at 659 (quoting *Boag v. MacDougall*, 454 U.S. 364, 366 (1982) (O'Connor, J., concurring)). The decision below cries out for summary reversal to

protect the integrity of the fact-finding process and the fundamental role juries play within it.

1. The Eleventh Circuit undermined the integrity of the fact-finding process by making an obviously erroneous finding that, in October 2017, "[Mr.] Sims 'was seen by Gastroenterology' 'for [a] follow[-]up' examination," at which point Dr. Montoya "prepared a progress note addressing [Mr.] Sims's condition and treatment plan." App. 3a. That is unmistakably wrong. Mr. Sims did not see anyone in a gastroenterology department that month (or any other month in the nearly two years he endured at Suwannee). In fact, Mr. Sims's inability to see anyone in gastroenterology was the heart of his complaint. App. 62a–64a. He did see Dr. Montoya, but Dr. Montoya was a hematologist-oncologist addressing a prior prostate cancer diagnosis. *See* App. 126a. Dr. Montoya never treated Mr. Sims's gastrointestinal bleeding or pain.[4]

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[4] The decision below also incorrectly describes Mr. Sims's complaint as having alleged that "Dr. Figueroa's 'deliberate indifference . . . result[ed] in advanced prostate cancer.'" *See* App. 8a. The Eleventh Circuit misread a portion of the complaint regarding *prior* lawsuits as if it referred to this case; the complaint in this case alleged that Dr. Figueroa was deliberately indifferent to Mr. Sims's rectal bleeding and pain, not prostate cancer. *See* App. 60a; App. 62a.

Dr. Montoya's note on one report—"was seen by Gastroenterology"—referred to an appointment *before* Mr. Sims's transfer to Suwannee. *See* App. 126a; App. 62a–63a. The gastroenterologist whom Mr. Sims had seen at that appointment recommended an eight-week follow-up—the follow-up that Dr. Figueroa inexplicably canceled. *See* App. 126a; App. 124a; App. 62a–63a. And that cancelation disregarded what a nurse recognized the following month: Mr. Sims's need for an "emergent referral" back to gastroenterology. *See* App. 128a; *see also* App. 126a.

2. The Eleventh Circuit continued to depart from the usual fact-finding process by providing its own medical diagnosis—one that does not appear in the record—of the cause of Mr. Sims's symptoms throughout his time at Suwannee. The Eleventh Circuit found that, "for prostate cancer, [Mr.] Sims took narcotics that caused constipation, gastrointestinal bleeding, and hemorrhoids." App. 2a. The Eleventh Circuit appears to have reached this medical judgment on its own. The only reference to narcotics in the record appears in a report written by a gastroenterologist in April 2020, after Mr. Sims had left Suwannee. *See* App. 161a. And that gastroenterologist simply wrote that Mr. Sims was "on narcotics due to his prostate cancer" alongside other diagnoses and

recommendations. *See* App. 161a; *see also* App. 161a (referring to "long term use narcotics"). Unlike the Eleventh Circuit, the gastroenterologist never opined that any medication—narcotic or otherwise—caused Mr. Sims's gastrointestinal disorders. That same gastroenterologist performed a colonoscopy, diagnosed "[gastrointestinal] bleeding" as well as "severe hemorrhoids," prescribed medication for constipation, and called for a specialized hemorrhoid banding procedure. *See* App. 160a–61a.

3. The Eleventh Circuit then improperly stepped into the shoes of a fact-finder by crediting one set of medical notes to determine that Mr. Sims "required only 'routine' treatment during the fall of 2017" and by disregarding other evidence that Mr. Sims needed—but never received—urgent or emergency treatment. *See* App. 4a, App. 10a–12a, App. 14a. The Eleventh Circuit appeared to base its determination on stamps that some nurses placed on Inmate Sick-Call Requests; each stamp between October 30, 2017, and December 1, 2017 marked Mr. Sims's triage level as "Routine." *See* App. 132a–35a; *see also* App. 133a (nurse's stamp listing triage levels for sick call as: "Routine," "Urgent," and "Emergent"). But the Eleventh Circuit ignored that another nurse's note had deemed

Mr. Sims's referral to a gastroenterologist "emergent" on October 12, 2017. *See* App. 128a; *see also* App. 126a (Dr. Montoya's referral). And the Eleventh Circuit failed to account for other evidence of Mr. Sims's urgent needs that went untreated: four sick-call requests and sworn statements that he had sought—but not received—treatment for "gross rectal bleeding" between October and December 2017. *See* App. 132a–35a; App. 115a; App. 62a–63a. The Eleventh Circuit's decision to credit one set of notes and to disregard the rest at the summary judgment stage reflects clear legal error. *See Tolan*, 572 U.S. at 659 (reaching the "inescapable conclusion" after reviewing a court's recitation of facts that it "credited the evidence of the party seeking summary judgment and failed properly to acknowledge key evidence offered by the party opposing that motion").

4. The Eleventh Circuit continued to supplant a jury's role when it found that, "after Dr. Figueroa prescribed over-the-counter medicine in December 2017," Mr. Sims experienced "little to no bleeding" and "responded well to 'routine' care" "into the summer of 2018." *See* App. 14a. That finding inexplicably discredited Mr. Sims's sworn statement about his continuing "rectal bleeding and pain," *see* App. 115a–18a, and

Dr. Montoya's "**urgent**" request for gastroenterological follow-up in January 2018, *see* App. 137a (emphasis in original). Mr. Sims also submitted five sick-call requests plus one grievance regarding his ongoing symptoms between January and April 2018. *See* App. 141a–45a; App. 63a. He "was still experiencing rectal bleeding and excruciating pain at the touch" when Dr. Montoya performed "[a]nother digital rectal exam," App. 116a, and submitted another "**urgent**" report about Mr. Sims's need to see a gastroenterologist in July 2018, App. 148a (emphasis in original). And Mr. Sims described the bleeding as "ongoing since 2017" on the very same sick-call request for help on which he described a "reoccur[e]nce of rectal bleeding" in September of that year. App. 146a.

5. The decision below draws more inferences against Mr. Sims—and continues to ignore his Seventh Amendment right to a jury trial—when it says that six of his sick-call requests reported rectal bleeding *without* requesting medical treatment. *See* App. 4a, App. 6a–7a (referring to requests Mr. Sims made on October 30, 2017; February 6, 2018; March 13, 2018; April 16, 2018; April 23, 2018; and September 11, 2018). The Eleventh Circuit's findings that Mr. Sims's "bleeding lessened" after the fall of 2017, *see* App. 4a, App. 10a, and that Mr. Sims

"responded well to 'routine' care" "into the summer of 2018," *see* App. 14a, appear to rely at least in part on these factual determinations about the sick-call requests. Yet the Eleventh Circuit reached them only by making improper inferences against Mr. Sims: that any time he submitted a sick-call request and wrote a medical explanation regarding his symptoms after the words "Medical (explain)," but did not check a box next to those words, he was not actually seeking treatment. *See* App. 132a; App. 142a; App. 143a; App. 145a.

For example, the opinion states about one sick-call request that Mr. Sims "reported rectal bleeding without requesting medical treatment." App. 6a. It is true that Mr. Sims did not check a box that appeared next to the words "Medical (explain)," but nor did he check any of the other boxes on that form. *See* App. 142a. Critically, he wrote in capital letters after "Medical (explain)": "CONTINUOUS RECTAL BLEEDING/PAIN" that started "OVER 9 MONTHS AGO." App. 142a. A fact-finder could reasonably read this request for sick call—and five others without checkmarks next to the "Medical (explain)" box—to mean Mr. Sims was obviously seeking medical treatment every time he asked for sick call and specifically described his gastrointestinal symptoms. *See Tolan*, 572 U.S.

at 658–59 (distinguishing what a jury could infer based on a witness's "words, in context," from an improper summary judgment determination that the words and context necessitated a particular factual finding). Yet the decision below draws inferences against Mr. Sims, and it deprives him of the right to have a jury resolve any factual disputes about his requests for treatment that Dr. Figueroa disregarded time and again.

6. Finally, the Eleventh Circuit both misstated the record and prevented a jury from deciding whether to credit Dr. Figueroa's explanations for his behavior by concluding that he made a "reasoned medical judgment" based on "first-hand observations" when he repeatedly decided "to ignore the recommendations that Dr. Montoya made based on second-hand information." *See* App. 11a–12a. Contrary to this characterization of the doctors' bases for their decisions, Dr. Montoya performed three digital rectal examinations over a nine-month period as he tried to get Dr. Figueroa to recognize the need for a gastroenterologist's diagnosis and care, whereas Dr. Figueroa performed exactly one rectal examination—in December 2017. *Compare* App. 114a–15a (referring to Dr. Montoya's rectal examination in October 2017), App. 77a (same for January 2018), *and* App. 116a (same for July 2018), *with*

App. 4a, App. 12a (referring to Dr. Figueroa's single rectal examination in December 2017). And determining whether Dr. Figueroa had any credible medical reason for repeatedly ignoring Dr. Montoya is a decision for a jury, not a federal court on summary judgment—and certainly not a decision that any fact-finder should base on an obviously erroneous view of the doctors' reliance on "first-hand observations," App. 11a–12a. *See Anderson*, 477 U.S. at 255 (explaining that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge").

The Eleventh Circuit ventured so far beyond the limits of a federal court's authority at summary judgment that this Court should summarily reverse. The Eleventh Circuit relied on—and refused to correct—misstatements of the record, disregarded sworn statements from Mr. Sims as well as medical reports from his hematologist-oncologist about his symptoms, and drew inferences against Mr. Sims over and over again. A jury easily could have credited Mr. Sims's testimony and Dr. Montoya's reports to find that Mr. Sims experienced persistent gastrointestinal bleeding and pain for nearly two years

without any meaningful diagnosis or treatment. From that finding, a reasonable jury would have no trouble deciding that Dr. Figueroa exhibited deliberate indifference toward Mr. Sims's serious medical needs. *See McElligott v. Foley*, 182 F.3d 1248, 1257–58 (11th Cir. 1999) (reversing summary judgment when defendants persisted with a "course of treatment" they knew to be "largely ineffective," but "declined to do anything more" for a plaintiff's abdominal pain (quoting *Hathaway v. Coughlin*, 37 F.3d 63, 68 (2d Cir. 1994) (footnote omitted)). This Court should exercise its "supervisory power" to correct the Eleventh Circuit's gross deviation from the summary judgment standard and to protect Mr. Sims's right to present this claim to a jury. *See* Sup. Ct. R. 10(a).

CONCLUSION

This Court should summarily reverse the decision below.

Respectfully submitted,

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