APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-11937

LYNN HAMLET,

Plaintiff - Appellant,

versus

MARTIN CORRECTIONAL INSTITUTION, et al.,

Defendants,

OFFICER HOXIE,

Defendant - Appellee.

Appeal from the United States District Court for the
Southern District of Florida
D.C. Docket No. 2:18-cv-14167-DMM

Before WILLIAM PRYOR, Chief Judge, JILL PRYOR, and GRANT, Circuit Judges.

GRANT, Circuit Judge:

Lynn Hamlet alleges mistreatment while he was an inmate at Martin Correctional Institution. Hamlet sued the prison and several of its officials, alleging violations of his rights under the First, Fourteenth, and Eighth Amendments to the United States Constitution. Our narrow task is to ask whether he has specifically alleged facts that—if true—would

violate his rights under clearly established law. After careful review of the record and with the benefit of oral argument, we do not believe that he has done so. We therefore affirm the judgments of the district court.

I.

We are reviewing two orders in this appeal. The first is the district court's sua sponte dismissal of Hamlet's First and Fourteenth Amendment claims under 28 U.S.C. § 1915(e)(2)(B)(ii), which requires district courts to dismiss proceedings in forma pauperis that fail to state a claim on which relief may be granted. The second is the district court's grant of summary judgment on Hamlet's Eighth Amendment claim against Officer Hoxie. For both orders, we review the decision of the district court de novo, accepting his allegations as true for his First and Fourteenth Amendment claims and viewing all disputed facts and reasonable inferences in the light most favorable to Hamlet for his Eighth Amendment claim. *See Hughes v. Lott*, 350 F.3d 1157, 1159–60 (11th Cir. 2003); *Jurich v. Compass Marine, Inc.*, 764 F.3d 1302, 1304 (11th Cir. 2014).[1]

II.

Hamlet is an elderly, diabetic man who was an inmate at Martin Correctional Institution in southern Florida. As he tells it, his troubles began with a long-running dispute with Officer K. Shultheiss and her husband Lieutenant A. Shultheiss, both of whom

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[1] We also construe Hamlet's pleadings liberally because he was then litigating pro se. *See Hughes*, 350 F.3d at 1160.

worked at the prison. He claims that the Shultheisses had engaged in a campaign of targeted harassment against him, including by filing a false disciplinary report. Hamlet had filed grievances about this alleged harassment years before any of the events giving rise to this case.

In April 2018, Hamlet had recently come out of a diabetic coma and did not have an appetite, so he saved a small bag of rice from the prison chow hall. When Officer K. Shultheiss discovered that he had taken food, he claims that she called him a "bitch." Hamlet, in turn, "told her what ever she call me it's back to her." Officer K. Shultheiss then said that Hamlet had called her a "bitch," wrote a disciplinary report saying that he had disrespected an official, and had him placed in disciplinary confinement. Hamlet sought an administrative remedy and signed the paperwork to sue the prison, Officer K. Shultheiss, and two other prison officials. A few weeks later, this lawsuit was formally docketed—then limited to a complaint about the allegedly fabricated disciplinary report.

About a week into Hamlet's confinement, he received a hearing about Officer K. Shultheiss's disciplinary report—a hearing over which Lieutenant A. Shultheiss presided. After that hearing, Hamlet's time in disciplinary confinement was extended.[2]

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[2] An exhibit offered by Hoxie establishes that Hamlet received an additional 22 days in disciplinary confinement (for a total of 30 days) as well as "30 days loss of GT," presumably referring to good time credits. But at the time of his pleading, Hamlet only alleged that he was "put in confinement" without further explanation.

The day after the hearing, Officer Hoxie escorted Hamlet to the handicap shower, which was designed for seated showering. While Hamlet showered, the enclosure began to fill with ankle-deep water. Meanwhile, a potato chip bag filled with feces and urine floated up and bumped against his ankles, which had open wounds—a diabetes-related condition from scratching his dry skin at night. Hamlet asked Hoxie to let him out, but Hoxie responded, "you did it," apparently accusing him of being the source of the feces and urine. Hoxie briefly let Hamlet out, but then changed his mind and shoved him back in the shower. In the end, Hoxie left him in the shower for roughly 30 or 40 minutes. Hamlet tried to move away from the urine and feces, but says he was ultimately unable to prevent them from getting into his wounds. He also claims that the problems did not end in the shower, alleging that Hoxie also took the sheets and clean clothes from his cell and threw them out in the hallway.

Once back in his cell, Hamlet says he still had feces in his open wounds from the shower, but he did not tell Hoxie or anyone else. Instead, he resorted to an attempt to clean his wounds with his bare hands and toilet water. He did not succeed. Though Hamlet became sick the next morning, he still did not tell anyone that he had feces in his wounds or ask anyone for anything to help clean himself, even though Hoxie ordered that he not be allowed to take a shower that week.

Three days later, Hamlet filed a grievance with the Warden about the shower incident. The grievance complained that Hoxie had blamed Hamlet for the

feces in the shower, that Hoxie had thrown out Hamlet's sheets, and that Hamlet had not been allowed to shower since the incident. It made no claims that Hamlet was sick or had feces on his body. The next day, he received medical attention for hypoglycemia. But nothing in the records of that visit indicates that he had wounds or feces on his body at that time.

Hamlet got progressively sicker over the next several days and was eventually hospitalized. By then, he had lost control of his bowels and defecated himself; he was covered in feces and urine when he was admitted to the hospital, where he received a shower. He was in-and-out of the hospital for some time before a bacterial infection required heart valve surgery; he ultimately spent months in the hospital and suffered serious complications.

Hamlet originally filed this lawsuit to litigate Officer K. Shultheiss's allegedly fabricated disciplinary report. He stopped litigating the suit while he was in the hospital, so his case was dismissed for lack of prosecution. Once Hamlet explained his situation, the court vacated its dismissal of the lawsuit. Magistrate Judge Reid then found the original § 1983 complaint deficient and ordered Hamlet to amend it. Hamlet did so, and he also expanded the scope of the complaint to include both his allegations that Lieutenant A. Shultheiss had improperly presided over his hearing and his allegations that Hoxie had exposed him to the feces and urine in the shower.

The magistrate judge construed Hamlet to be alleging violations of his First, Eighth, and

Fourteenth Amendment rights. She recommended that the Eighth Amendment claim against Hoxie be allowed to proceed, but that the rest of the complaint be dismissed without leave to amend under § 1915(e)(2)(B)(ii). She reasoned that Hamlet's First Amendment retaliation claim was conclusory and vague, and that his Fourteenth Amendment claim did not identify a protected liberty interest under the Due Process Clause. The district court adopted the magistrate judge's recommendations, dismissing all of Hamlet's claims without leave to amend except for the Eighth Amendment claim against Hoxie.

After discovery, the district court granted Hoxie's motion for summary judgment on the Eighth Amendment claim. The court rejected Hamlet's arguments on the merits, determining that—even if everything Hamlet alleged were true—Hamlet had not suffered objectively extreme conditions of confinement. The court also found that Hamlet had alleged no facts showing that Hoxie was subjectively aware that he faced any risk of infection from the shower. Hamlet appealed and obtained pro bono counsel.

III.

We begin with Hamlet's Eighth Amendment Claim against Officer Hoxie. We agree with the district court's grant of summary judgment. Hoxie is entitled to qualified immunity because his alleged actions do not violate clearly established Eighth Amendment law.[3]

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[3] The district court did not reach the question of qualified

The Eighth Amendment prohibits "cruel and unusual punishments." U.S. Const. amend. VIII. This prohibition applies to the conduct of state government officials through the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 764 & n.12 (2010). We assess Eighth Amendment challenges to unconstitutional conditions of confinement with a two-prong inquiry. *Thomas v. Bryant*, 614 F.3d 1288, 1303–04 (11th Cir. 2010). The first prong is an objective inquiry into whether the conditions are "sufficiently serious to constitute a denial of the minimal civilized measure of life's necessities." *Id.* at 1304 (quotations omitted). "Extreme deprivations" are required to make out a conditions of confinement claim. *Id.* The second prong is a subjective inquiry into whether "the official had a sufficiently culpable state of mind." *Id.* (quotation omitted). Only "subjective deliberate indifference to the substantial risk of serious harm caused by such conditions" satisfies this prong. *Id.* at 1307.

Qualified immunity shields government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To receive qualified immunity, the official must first prove that he was acting within the scope of his discretionary authority when the

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immunity. But we may affirm a grant of summary judgment "on any ground that finds support in the record" and qualified immunity was briefed by both parties. *See Lucas v. W.W. Grainger, Inc.*, 257 F.3d 1249, 1256 (11th Cir. 2001) (quotation omitted).

allegedly unlawful conduct took place. *Mobley v. Palm Beach Cnty. Sheriff Dep't*, 783 F.3d 1347, 1352 (11th Cir. 2015). Hoxie calls it "undisputed" that he was acting within his discretionary authority, and Hamlet does not contest this characterization.

Once an official establishes that he was acting within his discretionary authority, the burden shifts to the plaintiff to "demonstrate (1) that the facts show that the official violated the plaintiff's constitutional rights and (2) that the law clearly established those rights at the time of the alleged misconduct." *Id.* at 1352–53 (quotations omitted). If the defendant's conduct does not violate clearly established law, then that alone is sufficient grounds for a court to grant qualified immunity to the defendant. *See Pearson v. Callahan*, 555 U.S. 223, 242 (2009). The law "does not require a case directly on point for a right to be clearly established," but "existing precedent must have placed the statutory or constitutional question beyond debate." *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7–8 (2021) (quotation omitted).

Here, we consider the narrow question of whether Hamlet alleged conduct that violated clearly established Eighth Amendment law. He did not. Clearly established law does not show that a relatively brief exposure to urine and feces in the shower is an objectively extreme deprivation of the minimal civilized measure of life's necessities.

The case cited by Hamlet that comes closest to his allegations is *Brooks v. Warden*, 800 F.3d 1295 (11th Cir. 2015).[4] In *Brooks*, the plaintiff alleged that he

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[4] Hamlet also relies heavily on *Bilal v. Geo Care, LLC*, a case

was wearing waist-chains while receiving medical treatment, that a guard refused to lower his chains to allow him to use the bathroom, that he consequently defecated himself, and that he was forced to sit in his own excrement for two days while the guard mocked him and prevented nurses from cleaning him. *See* 800 F.3d at 1298, 1300. We determined that the exposure to feces in Brooks was a "deprivation of basic sanitary conditions" that violated the Eighth Amendment. *Id.* at 1304–05.

Hamlet argues that *Brooks* clearly establishes that any "contact and close proximity with excrement" creates "an objectively unreasonable risk of serious damage" to a prisoner's "future health" and therefore violates the Eighth Amendment. *Id.* at 1303–04 (quotation omitted). But this argument misunderstands the nature of our qualified immunity analysis. The Supreme Court has "repeatedly told courts not to define clearly established law at too high a level of generality." *City of Tahlequah v. Bond*, 142 S. Ct. 9, 11 (2021). We cannot remove a line of dicta from its context and abstract it to the highest possible level. Instead, we must look at our case law and ask if the governing rule's "contours" are "so well defined that it is clear to a reasonable officer that his conduct

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with similar facts to *Brooks* where we found a violation of the Fourteenth Amendment when a civilly confined man was forced to sit in his own excrement for three hours. *See* 981 F.3d 903, 909, 915 (11th Cir. 2020). But *Bilal* was decided after the alleged 2018 incident in the shower, so it is "not relevant to determining whether the law was clearly established at the time" that Hoxie allegedly acted. *See Gaines v. Wardynski*, 871 F.3d 1203, 1212 n.11 (11th Cir. 2017). In any event, *Bilal* would not change our analysis.

was unlawful in the situation he confronted." *Id.* at 11 (quotations omitted).

Brooks does not clearly establish that Hamlet's alleged exposure to feces and urine in the shower objectively deprived Hamlet of the minimal civilized measure of life's necessities. The alleged exposure in the shower here was different in both degree and kind from the extreme exposure in *Brooks*.

The most obvious difference is the duration of the exposure. Hamlet claims to have been in proximity to the bag of feces and urine for 30 to 40 minutes—not two days. But just as importantly, the nature of Hamlet's exposure to feces was less extreme. In *Brooks*, feces was continuously pressed against the plaintiff's body. *See* 800 F.3d at 1303–04. Here, the bag of feces and urine are alleged to have repeatedly floated up to Hamlet's ankles in the shower, suggesting intermittent rather than consistent contact.[5]

Furthermore, unlike the plaintiff in *Brooks*, Hamlet had means to mitigate the severity of his exposure to the urine and feces. Hamlet's shower naturally involved access to running water. And Hamlet was sitting on a seat in the handicap shower and testified that he could have placed his feet on top of the seat. In this procedural posture, we do not question Hamlet's claim that he nonetheless failed to

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[5] Hamlet's appellate briefing argues that the feces dissolved in the water, and that the contaminated water infected Hamlet's wounds. But under either explanation for how feces ended up in Hamlet's wounds, having feces in proximity to a person in a shower is still different from being forced to defecate oneself and sit in the excrement.

avoid contact with the feces. But access to running water and the possibility of avoiding contact with feces are important considerations in assessing the objective extremity of the conditions of Hamlet's confinement, and these considerations were not present in *Brooks*. Nor does Hamlet allege that Hoxie was "[l]aughing at and ridiculing" him for being forced to remain in contact with the feces or that Hoxie forbade others from helping him—further distinctions from *Brooks*. *See Brooks*, 800 F.3d at 1307, 1303.

In short, the plaintiff in *Brooks* alleged that he was "forced to lie in direct and extended contact with his own feces without any ability to clean himself" for "a full two days" while the defendant mocked the plaintiff and prevented him from being cleaned. *Id.* at 1305. Intermittent contact with feces for 30-40 minutes with access to running water is simply a different constitutional question. *Brooks* does not place that question "beyond debate." *See Rivas-Villegas*, 142 S. Ct. at 8 (quotation omitted).[6]

In another effort to frame his case as more extreme than *Brooks*, Hamlet tries to define his exposure to

[6] Other cases cited by Hamlet also involved longer and more direct exposure to unsanitary conditions than this case, often accompanied by deprivation of water and other prolonged deprivations of basic necessities. *See, e.g., Chandler v. Baird*, 926 F.2d 1057, 1063, 1066 (11th Cir. 1991) (reversing a summary judgment finding no Eighth Amendment violation when the plaintiff alleged that he was locked in a freezing cold cell covered in filth for multiple days without running water); *Novak v. Beto*, 453 F.2d 661, 665 (5th Cir. 1971) (describing cases with prolonged confinement in filthy cells lacking "basic elements of hygiene," often involving freezing cold temperatures and a lack of toilet for an extended period).

feces as lasting for days, not minutes. He argues that he was forced to spend days (and perhaps weeks) with feces festering in his open wounds, and that the many days of exposure should be the relevant period for our analysis, not just the exposure in the shower.

To be sure, framing Hamlet's injury as several days with feces festering in open wounds would impact our analysis of whether his injury satisfied the first prong of the Eighth Amendment inquiry under clearly established law. But to state an Eighth Amendment conditions of confinement claim, Hamlet also must show that Hoxie had "subjective deliberate indifference to the substantial risk of serious harm." *Thomas*, 614 F.3d at 1307. Nothing in this record suggests that Hoxie—or anyone but Hamlet himself, for that matter—even knew that he had wounds on his ankles, much less that he had feces stuck to his wounds for days after his shower. Hamlet admits that he did not ask Hoxie for anything when he was led back to his cell after the shower, and he never suggests that he told Hoxie that he had feces in his wounds. Nor did he mention his wounds or any remaining feces on his body in the grievance he filed with the Warden three days after the shower. And the nurses' report from Hamlet's treatment for hypoglycemia—taken the day after the alleged shower incident—likewise did not note any wounds or feces on Hamlet's body, suggesting that, at the absolute minimum, any wounds or feces were not so obvious that Hoxie would have noticed them. Under our Eighth Amendment analysis, Hoxie could not be "subjectively culpable" for creating conditions of which he was completely unaware. So whether

because a 30-to-40-minute exposure is not objectively extreme under clearly established law, or because the record does not support an inference that Hoxie was subjectively aware of feces in Hamlet's wounds after the shower, Hamlet's claim fails.

IV.

We now turn to Hamlet's appeal of the district court's § 1915 order. Hamlet argues that the court should have allowed two of the dismissed claims to proceed: a First Amendment retaliation claim about the allegedly fabricated disciplinary report, and a Fourteenth Amendment Due Process claim about Lieutenant A. Shultheiss allegedly adjudicating his own wife's report against Hamlet. We are not persuaded.[7]

To begin, we agree with the district court that Hamlet alleged retaliation against his constitutionally protected filing of grievances, but that both the original and amended complaints were too vague and conclusory to survive a § 1915

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[7] Hamlet's appellate briefing describes the facts of the hearing mainly based on his sworn testimony during discovery for his Eighth Amendment claim, testimony that was given long after the district court's § 1915 order. The district court's order, however, can only be analyzed based on the information in the record at that time. Seemingly realizing that this limitation is fatal to his case, Hamlet requested at oral argument that this Court grant him leave to amend his complaint a second time to better plead his First and Fourteenth Amendment claims. He has not sought post-judgment leave to amend his complaint before the district court, and we will not consider the question in the first instance. *See, e.g., Callahan v. U.S. Dep't of Health & Hum. Servs.*, 939 F.3d 1251, 1266 (11th Cir. 2019).

screening.[8]

With the generosity due to a pro se plaintiff, a court could piece together allegations that the Shultheisses called Hamlet names because he had filed complaints against them, and that Officer K. Shultheiss falsely filed a report claiming that Hamlet called her a "bitch." But these are "naked assertions devoid of further factual enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (brackets and quotations omitted). At no point does Hamlet describe in any detail conduct that, if true, would show that he "suffered adverse conduct that would likely deter a person of ordinary firmness" from engaging in protected speech, as is necessary to bring a retaliation claim. *See Castle v. Appalachian Tech. Coll.*, 631 F.3d 1194, 1197 (11th Cir. 2011).

Hamlet's Fourteenth Amendment claim faces an even more fundamental problem: his pleadings did not allege that his hearing led to the deprivation of a protected liberty interest. A prisoner only has a right to due process when "a change in the prisoner's conditions of confinement is so severe that it essentially exceeds the sentence imposed by the court" or when the state removes a consistently bestowed benefit in a way that creates atypical

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[8] We note that the magistrate judge specifically instructed Hamlet that his amended complaint would "be the operative pleading considered in this case," that "only the claims listed therein will be addressed by the Court," and that "[f]acts alleged and claims raised in plaintiff's previous filings that are not specifically repleaded in the amended complaint will be considered abandoned and voluntarily dismissed." But the complaints are deficient whether read together or in isolation.

hardship. *Kirby v. Siegelman*, 195 F.3d 1285, 1291 (11th Cir. 1999). Disciplinary confinement does not per se implicate a protected liberty interest if it "does not present a dramatic departure from the basic conditions" of the sentence. *Sandin v. Conner*, 515 U.S. 472, 485–86 (1995) (holding that 30 days in disciplinary segregation did not trigger any due process rights).

Hamlet's complaint alleges that he was "put in confinement" after his hearing. But that is all; he alleges nothing about the conditions or duration of his confinement that would rise above the bar in *Sandin* and entitle him to due process. That alone resolves his Due Process claim.

* * *

Hamlet has not adequately alleged a violation of clearly established law. We **AFFIRM** the judgments of the district court.

[Docketed Nov. 9, 2022]

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-CV-14167-MIDDLEBROOKS

LYNN EDWARD HAMLET

Plaintiff,

v.

OFFICER BRANDON HOXIE,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court on Defendant's Motion for Summary Judgment ("Motion") (DE 108). I have considered the Motion, Plaintiff's Amended Complaint (DE 26), Defendant's Statement of Material Facts in Support of Summary Judgment (DE 112), Plaintiff's Sworn Affidavit Opposing Summary Judgment (DE 115), Defendant's Reply (DE 117), Defendant's Reply Statement of Material Facts (DE 119), the supporting exhibits, and the record in this case. For the reasons stated below, the Motion is granted.

I. BACKGROUND

A. Factual Background

The following facts are taken from Plaintiff Lynn Edward Hamlet's Amended Complaint (DE 26), his deposition testimony (DE 112-1), and his Sworn Affidavit Opposing Summary Judgment (DE 115).

Defendant Officer Brandon Hoxie, for his part, disputes only the fact that he was on duty in the unit where Mr. Hamlet was housed on the night in question. Thus, to the extent the alleged events occurred, Officer Hoxie contends that he was not involved.

On April 25, 2018, Mr. Hamlet was housed in the confinement unit at the Martin Correctional Institution ("Martin CI"). Pl.'s Dep. Tr. (DE 112-1 at 13:20–22). Late that evening, Mr. Hamlet was escorted to the handicap shower by two officers. (*Id.* at 29:1–9). After he began showering, Mr. Hamlet noticed a small potato chip bag containing human feces floating in approximately ankle-deep standing water in the shower. (*Id.* at 35:1–36:7). The bag, an approximately 2.5 ounce, single-serving size bag of potato chips, had been left in the shower by an inmate who had been confined there all day and had to relieve himself in the shower. (*Id.* at 31:12–23); (DE 115 at 5). The potato chip bag was not visible to Mr. Hamlet when he first stepped into the shower, and Officer Hoxie, whose job it was to supervise the unit, never checked to see if the shower was clean before Mr. Hamlet entered. (DE 112-1 at 34:19–25); (DE 115 at 20). In addition to the potato chip bag of feces, Mr. Hamlet also noticed urine in the shower. (DE 112-1 at 35:6); (DE 26 at 4).

Upon noticing the potato chip bag containing feces and the urine in the shower, Mr. Hamlet called out to the officers to be let out of the shower. (DE 112-1 at 14:13–15). Officer Hoxie responded by accusing Mr. Hamlet of defecating in the shower, saying "you did it." (DE 115 at 15, 20); (DE 112-1 at 14:15–17). Officer

Hoxie initially opened the door to let Mr. Hamlet out, but then "change[d] his mind and [pushed] [him] back in the shower." (DE 115 at 6). While Mr. Hamlet was showering, the urine and feces were "bumping up against [his] legs," and while he was able to move to a higher area of the shower stall away from the bag of feces, he was unable to avoid getting feces and urine on his ankles. (DE 112-1 at 35:6–7; 39:16–20). Mr. Hamlet does not claim that he lacked running water at any point during his shower, but he was apparently unable to rinse the human waste off his ankles. Mr. Hamlet was locked in the handicap shower for approximately 30 to 40 minutes, and during that time the feces and urine "covered all [his] open wounds" (referring to cuts on Mr. Hamlet's ankles caused by his diabetes, which makes him scratch himself at night). (*Id*. at 15:2–4, 39:23–25, 40:22).

While Mr. Hamlet was locked in the shower, Officer Hoxie "went into [his] cell and took all the clean clothes and left [him] with nothing to clean the feces and urine off [him]self." (DE 26 at 5). Mr. Hamlet recalls being given a towel by one of the officers prior to entering the shower, yet when he arrived back at his cell, he claims he "had nothing to clean the feces and urine off of [himself]." (DE 112-1 at 15:7, 29:23–30:3). Mr. Hamlet attempted to use the water in his cell's toilet and his bare hands to get the human waste off his ankles, but he was unsuccessful. (*Id*. at 15:6–12). Mr. Hamlet never asked Officer Hoxie for anything to clean himself. (*Id*. at 43:16–18).

Mr. Hamlet developed a bacterial infection as a result of his exposure to human waste, which infected his "urinary tract and liver." (DE 26 at 4). It is unclear

when exactly Mr. Hamlet became sick. At his deposition, Mr. Hamlet testified that he awoke the next morning, April 26, 2018, feeling very ill. (DE 112-1 at 15:15–16). In his Sworn Affidavit, however, Mr. Hamlet says that he became sick "the first week of May" from a bacterial infection. (DE 115 at 21). In the very next sentence, however, Mr. Hamlet states that he became "very ill" within 24 hours as a result of the feces and urine infecting his diabetic cuts. (*Id.*) In any event, when Mr. Hamlet began feeling ill, two nurses "came and took [him] to the infirmary to shower and dress and [he] was then rush[ed] to Larkin Community Hospital." (DE 115 at 14); (DE 112-1 at 18:14–18). The bacterial infection "completely destroyed" Mr. Hamlet's heart valves, necessitating heart valve surgery to save his life. (DE 112-1 at 18:18–21). Mr. Hamlet stayed in the hospital for two months, during which time he was unable to walk, stand, or use the restroom on his own. (*Id.* at 17:6–23). Mr. Hamlet has not produced any medical records, however, indicating that he was ever treated for a bacterial infection. The two medical reports produced by Officer Hoxie indicate that on April 29, 2018, Mr. Hamlet was put into the infirmary for hypoglycemia and on May 6, 2018, Mr. Hamlet refused to take his Hepatitis C medication. *See* Def.'s Ex. 2 (DE 112-2); Def.'s Ex. 3 (DE 112-3).

B. Procedural History

On April 18, 2018, Mr. Hamlet filed a complaint under 42 U.S.C. § 1983 against Martin CI and three correctional officers: Sergeant Coney, Officer Schultheiss and Lieutenant Pensing. (DE 1). The first complaint did not name Officer Hoxie as a defendant.

The complaint alleged that while Mr. Hamlet was in the chow hall, Officer Schultheiss, "called [him] a bitch for no other reason than [Mr. Hamlet] writing her and her husband up for violations at Martin." (*Id.* at 3). Mr. Hamlet alleged that Officer Schultheiss placed him in solitary confinement as a punishment for taking a 3-ounce bag of rice out of the dining area. (*Id.*) He claimed that because he is a diabetic and had just come out of a diabetic coma, he needed to take a snack with him to eat after taking his insulin. (*Id.* at 3, 5). Mr. Hamlet alleged that this punishment was in retaliation for a complaint he filed against Officer Schultheiss. (*Id.* at 5). Mr. Hamlet also alleged that Lieutenant Pensing assisted Officer Schultheiss in placing him in solitary confinement, and that this punishment violated Department of Corrections policy. (Id. at 7).

On June 27, 2018, I adopted the Report and Recommendation of the Magistrate Judge recommending dismissal for lack of prosecution. (DE 8). The Magistrate Judge concluded that because Mr. Hamlet had failed to comply with the Court's order requiring him to pay the filing fee or file a properly documented motion for leave to proceed *in forma pauperis*, he had abandoned the lawsuit. (DE 5 at 1). Following the Court's dismissal, on July 10, 2018, Mr. Hamlet filed a Motion for Leave to Amend his Complaint, explaining that he had been unable to comply with the Court's order because he had been hospitalized and had not received his mail. (DE 10, 11). His Motion for Leave to Amend re-alleged the facts in his original complaint and also contained new allegations against three new defendants: Lieutenant

Schultheiss (Officer Schultheiss' husband), Officer Hoxie, and John Mitchell (food service director). (DE 10 at 1). Relevant here, the Motion for Leave to Amend added the allegation that Officer Hoxie confined Mr. Hamlet in a handicapped shower stall containing human feces in a potato chip bag, causing a near-fatal bacterial infection. (*Id.* at 10).

On December 19, 2018, I vacated my order dismissing the case for lack of prosecution (DE 15) and on July 26, 2019, the Magistrate Judge ordered Mr. Hamlet to file an Amended Complaint (DE 25). On August 22, 2019, Mr. Hamlet filed his Amended Complaint in response to the Court's order. (DE 26) Liberally construed, the Amended Complaint stated three causes of action under section 1983: (1) a First Amendment retaliation claim; (2) an Eight Amendment claim for cruel and unusual punishment; and (3) an Eight Amendment claim for deliberate indifference to serious medical needs. (*Id.*) The Amended Complaint named six defendants: (1) Martin CI; (2) Officer K. Schultheiss, (3) "Captain Schultheiss" (whom the Amended Complaint also refers to as "Lt. Schultheiss"), (4) Captain Bensing; (5) Mr. Mitchell; and (6) Officer Hoxie. (*Id.* at 2–6). The Amended Complaint re-alleged that Officer Hoxie "lock[ed] the Plaintiff in a shower with feces and human urine floating around inside the shower, that got in the Plaintiff['s] urinary tract and liver," causing a bacterial infection that required him to have heart valve surgery and nearly cost him his life. (DE 26 at 4–7).

On December 31, 2019, I adopted the Magistrate Judge's Report and Recommendation (DE 28) to

dismiss all defendants except Officer Hoxie (DE 29). The Magistrate Judge found that Mr. Hamlet had failed to state a claim for constitutional violations against five of the six defendants, but had adequately stated an Eight Amendment claim for cruel and unusual punishment against Officer Hoxie based on the allegation that Officer Hoxie "locked [Plaintiff] in a shower with feces and urine and refused to let him out." (DE 28 at 8). On May 11, 2020, I adopted the Magistrate Judge's Report and Recommendation to deny Officer Hoxie's Motion to Dismiss, finding that Mr. Hamlet had exhausted his administrative remedies prior to filing suit. (DE 43, 50). Following discovery, on February 24, 2021, Officer Hoxie moved for summary judgment. (DE 108).

II. SUMMARY JUDGMENT STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)(1)(A)).

Where the non-moving party bears the burden of proof on an issue at trial, the movant may simply "[point] out to the district court that there is an absence of evidence to support the nonmoving party's

case." *Id.* at 325. After the movant has met its burden under Rule 56(c), the burden shifts to the non-moving party to establish that there is a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). "The nonmovant's response must be tailored to the method by which the movant carried its initial burden." *Hinson v. United States*, 55 F. Supp. 2d 1376, 1380 (S.D. Ga. 1998), aff'd, 180 F.3d 275 (11th Cir. 1999). "If the movant presented evidence affirmatively negating a material fact, the non-movant 'must respond with evidence sufficient to withstand a directed verdict motion at trial on the material fact sought to be negated.'" *Id.* (citing *Fitzpatrick v. City of Altanta*, 2 F. 3d 1112, 1116 (11th Cir. 1993)). "If the movant demonstrated an absence of evidence on a material fact, the nonmovant must either show that the record contains evidence that was 'overlooked or ignored' by the movant, or 'come forward with additional evidence sufficient to withstand a directed verdict motion at trial based on the alleged evidentiary deficiency.'" *Id.* (citing *Fitzpatrick*, 2 F. 3d at 1116)).

III. DISCUSSION

A. Mr. Hamlet has Exhausted his Administrative Remedies

Under the Prison Litigation Reform Act ("PLRA"), "[n]o action shall be brought with respect to prison conditions under section 1983 . . . by a prisoner . . . until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). "The plain language of the statute makes exhaustion a precondition to filing an action in federal court."

Higginbottom v. Carter, 223 F.3d 1259, 1261 (11th Cir. 2000) (quoting *Freeman v. Francis*, 196 F.3d 641, 645 (6th Cir. 1999)). "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002).

Officer Hoxie reasserts his exhaustion defense, which this Court rejected when it denied his Motion to Dismiss (DE 50). In that Order, I adopted the Magistrate Judge's finding that Mr. Hamlet had properly exhausted his administrative remedies by filing a grievance against Officer Hoxie on April 28, 2018, which notified prison officials of the shower incident. (DE 43 at 2–3 (citing Def.'s Ex. E, DE 36-5)). Officer Hoxie argues that he may reassert this defense, however, because when I denied his Motion to Dismiss, it was not yet known that the shower incident had in fact occurred seven days after Mr. Hamlet initiated this lawsuit. (DE 108 at 7-9). According to Officer Hoxie, because the PLRA requires exhaustion of all claims *before* the plaintiff files suit, I must therefore dismiss this action without prejudice for failure to exhaust. (*Id.*)[1]

Officer Hoxie is incorrect that a claim in an

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[1] Officer Hoxie does not otherwise present arguments that require me to reconsider the Magistrate Judge's findings at the Motion to Dismiss stage that (1) Mr. Hamlet's grievance adequately notified prison officials of the shower incident and (2) the prison never invoked its procedural rules, but rather returned Mr. Hamlet's grievance without action, excusing him from filing an appeal. (DE 43 at 3–6).

amended complaint arising after a prisoner files suit cannot be exhausted under the PLRA. In *Barnes v. Briley*, the Seventh Circuit held that "[t]he filing of the amended complaint [i]s the functional equivalent of filing a new complaint . . . and it [i]s only at that time that it bec[omes] necessary to have exhausted the administrative remedies . . . " 420 F.3d 673, 678 (7th Cir. 2005). In *Barnes*, the plaintiff initiated the action in October of 2000, and in August of 2003, the district court permitted the plaintiff to amend his complaint to add new claims against new defendants concerning incidents that occurred after the plaintiff initiated the lawsuit. *Id*. at 676. The Seventh Circuit affirmed, holding that because the plaintiff had complied with prison grievance procedures regarding these new incidents, he had "complied with § 1997e(a) by exhausting his administrative remedies for his § 1983 claims before amending his complaint to add those claims." *Id.* at 677. The Seventh Circuit added that the alternative approach would require the plaintiff to "shoulder an impossible task—to exhaust remedies not yet pertinent to the allegations of the filed complaint." *Id*. at 678.

Here, Mr. Hamlet was granted leave to proceed with the claim against Officer Hoxie in his Amended Complaint. *See* (DE 28, 29). Mr. Hamlet's Amended Complaint was, in effect, a supplemental pleading under Federal Rule of Civil Procedure 15(d) because it alleged events that occurred after the original complaint was filed. Rule 15(d) states: "on motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that

happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d). Because Rule 15(d) permits plaintiffs to supplement their pleadings with claims arising after the original complaint is filed, it follows then that prisoners supplementing their pleadings in this manner can only exhaust their supplemental claims after the original complaint is filed. If the contrary view were correct, then the PLRA would prohibit prisoners from availing themselves of Rule 15(d), and the Eleventh Circuit has held that "there is no conflict" between Rule 15 and the PLRA. *Harris v. Garner*, 216 F. 3d 970, 982 (11th Cir. 2000).

Relying on *Harris*, Officer Hoxie contends that "the Eleventh Circuit explicitly rejected an argument that an amended pleading authorized under Rule 15(d) . . . could overrule the PLRA's restriction." (DE 108 at 8). But *Harris* does not hold that the PLRA's exhaustion requirement precludes supplemental claims under Rule 15(d); there, the Eleventh Circuit addressed a different provision of the PLRA, section 1997e(e), which deals not with exhaustion but with the requirement that prisoners show "physical injury or the commission of a sexual act" in any claim for mental or emotional injury. § 1997e(e). In *Harris*, the question was whether the PLRA applied *at all* to plaintiffs who were still incarcerated when they initiated the lawsuit but had been released from prison when they filed their amended complaint. The Eleventh Circuit held that "[t]he status that counts, and the only status that counts, for purposes of section 1997e(e) is whether the plaintiff was a 'prisoner confined in a jail, prison, or other correctional facility' at the time the federal civil action

was 'brought,' i.e., when it was filed." *Id*. at 981.

But *Harris* acknowledged that this rule was not a blanket proscription on prisoners filing Rule 15(d) claims arising after their lawsuit was filed, noting that "[i]n proper circumstances and when the requirements contained in Rule 15 are met, the rule does permit amendments or supplements to pleadings in order to bring to the attention of the court changes in the facts." *Id*. In *Harris*, "the change in the facts (the post-filing release of the plaintiffs) . . . ma[de] no difference whatsoever under section 1997e(e)," and thus the plaintiffs could not use Rule 15(d) simply as an end-run around the PLRA's limitation on recovery. *Id*. But here, by contrast, the change in facts *does* make a difference under a different provision of the PLRA—section 1997(e)(a)—which requires a prisoner to exhaust administrative remedies before filing suit. If a prisoner has been granted leave to file supplemental claims arising after the lawsuit is filed, that prisoner has no choice but to exhaust these new claims after the lawsuit is filed. The holding in *Harris* does not conflict with the Seventh Circuit's holding in *Barnes* allowing post-filing exhaustion; the formerly-incarcerated plaintiffs in *Harris* were still permitted to file their supplemental pleadings under Rule 15(d)—only subject to the restrictions of the PLRA. *Harris* does not hold that the PLRA prohibits a prisoner from filing supplemental claims at all.

Lastly, I would note that the outcome Officer Hoxie urges—dismissal of the case without prejudice to allow Mr. Hamlet to file a new civil action—would conflict with a core purpose of the PLRA: "to conserve scarce judicial resources." *Alexander v. Hawk*, 159

F.3d 1321, 1327 (11th Cir. 1998). It makes little sense to require Mr. Hamlet to file a whole new lawsuit now, at the summary judgment stage, three years into the litigation. As the Eleventh Circuit stressed in *Harris*, "the intent of Congress behind section 1997e(e) was to reduce the number of prisoner lawsuits filed." *Harris*, 216 F.3d at 981. Requiring Mr. Hamlet to file a new lawsuit at this stage would contravene that intent. Accordingly, I find that Mr. Hamlet has exhausted his administrative remedies under § 1997e(a).

B. Officer Hoxie is Entitled to Summary Judgment on the Merits

Although Officer Hoxie cannot prevail on his exhaustion defense, he is nonetheless entitled to summary judgment on the merits. Even accepting every detail in Mr. Hamlet's story as true, Officer Hoxie's actions fell far short of an Eight Amendment violation.[2] To establish that conditions of confinement

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[2] Officer Hoxie also argues that the duty roster for the evening of April 25, 2018 and the Declaration of Asst. Warden Holtz conclusively establish that he was not working in the confinement housing unit when the alleged incident occurred. (DE 108 at 10); Def's Ex. B (DE 108-2 at 5; ¶¶ 5-6). He relies on *Scott v. Harris*, which held that where a videotape discredits one side's version of events, the court must "view[] the facts in the light depicted by the videotape" on summary judgment. 550 U.S. 372, 379–80 (2007). The Eleventh Circuit has held, however, that the forms of evidence Officer Hoxie offers here—prison records and officer testimony—are not as conclusive as a videotape and thus do not negate a dispute of material fact. *See Sears v. Roberts*, 922 F.3d 1199, 1208 (11th Cir. 2019) (holding that there is "a big difference" between the video evidence presented in *Scott*, which "blatantly contradicted" the plaintiff's account, and "affidavits . . . disciplinary reports . . . reports of force and incident reports," which merely "pit the correctional

violate the Eighth Amendment, a plaintiff must satisfy each element of a multi-tiered inquiry. The first element sets an objective hurdle, where "a prisoner must prove that the condition he complains of is sufficiently serious to violate the Eighth Amendment." *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004) (quotation marks omitted). An objective Eighth Amendment violation "must be extreme" and deprive the prisoner "of the minimal civilized measure of life's necessities." *Id.* (quotation marks omitted) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). The second requisite element is a subjective one: "[T]he prisoner must show that the defendant prison officials acted with a sufficiently culpable state of mind with regard to the condition at issue." *Id.* (quotation marks omitted). Negligence is not enough; the officer "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 1289–90 (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

Here, Mr. Hamlet can satisfy neither the objective nor subjective prongs of an Eighth Amendment claim. First, his exposure to a small potato-chip bag's worth of feces, and perhaps some urine, for at most 40 minutes was not extreme enough to satisfy the objective component of an Eighth Amendment claim. The Eleventh Circuit has recognized that "[e]xposure to human waste, like few other conditions of confinement, evokes both the health concerns emphasized in *Farmer* and the more general standards of dignity embodied in the Eighth

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officers' word against [the plaintiff's] word.")

Amendment." *Brooks v. Warden*, 800 F.3d 1295, 1304 (11th Cir. 2015) (quoting *DeSpain v. Uphoff,* 264 F.3d 965, 974 (10th Cir. 2001)). "Allegations of unhygienic conditions, when combined with the jail's failure to provide detainees with a way to clean for themselves with running water or other supplies" may state a claim for relief. *Id.* (quoting *Budd v. Motley*, 711 F.3d 840 (7th Cir. 2013)). In *Brooks*, the plaintiff alleged that he was "forced to lie in direct and extended contact with his own feces without any ability to clean himself, while confined to a hospital bed in maximum security constraints." *Id.* at 1305. He was "denied the ability to use the bathroom or clean himself for a full two days." *Id.*

Here, Mr. Hamlet was subjected to conditions of confinement that were significantly less extreme and unsanitary than what was alleged in *Brooks*. At his deposition, Mr. Hamlet testified that he was exposed to feces in a 2.5-ounce potato chip bag, as well as some urine, for no longer than 40 minutes while he was in the shower. (DE 112-1 at 31:12–23, 39:23–25). Mr. Hamlet admits that he had running water in the shower and does not claim that the water was shut off at any point while he was showering. (*Id.* at 36:16–17). He also concedes that he was able to stand at a higher level in the shower where he could avoid the bag of feces. (*Id.* at 39:16–20). Mr. Hamlet fails to explain why, given the small amount of feces and the availability of running water, he was unable to rinse the feces from his ankles while he was in the shower. He also alleges that there was urine in the shower, but this allegation is vague and conclusory; he does not describe how much urine was in the shower or

where it was located. Mr. Hamlet further recalls being given a towel by one of the officers prior to his shower, which he could have used to clean the waste from his ankles. (*Id*. at 29:23–30:3).

Officer Hoxie points to two cases that illustrate why the conditions described here did not violate the Eighth Amendment. In *Saunders v. Sheriff of Brevard Cty.*, the plaintiffs alleged that "inmates would urinate, defecate, and ejaculate in their cells, and that the authorities wouldn't clean the resulting residue for several days." 735 F. App'x 559, 562 (11th Cir. 2018). "[U]rine would splash from the cell's communal toilet onto an inmate's sleeping space." *Id*. In addition, the jail would deprive inmates of soap, utensils and toilet paper for unreasonable periods of time. *Id*. The Eleventh Circuit found that despite the "undoubtedly unpleasant conditions," the plaintiffs could not overcome the defendants' qualified immunity defenses because prior case law had not clearly established that the alleged conditions were "unconstitutionally unsanitary." *Id*. at 567. And in *Alfred v. Bryant*, the Eleventh Circuit held that "sleeping on a steel bed without a mattress for eighteen days, though uncomfortable, is not so extreme as to violate contemporary standards of decency." 378 F. App'x 977, 980 (11th Cir. 2010). "Similarly, having to use a toilet which lacks proper water pressure and occasionally overflows is unpleasant but not necessarily unconstitutional." *Id.*

Here, the conditions Mr. Hamlet was exposed to were even less extreme than what was alleged in *Saunders* and *Alfred*. Mr. Hamlet was exposed to a minimal amount of waste for at most 40 minutes

while confined in a shower that had running water. Thus, he cannot satisfy the objective prong of an Eighth Amendment violation.

Second, Mr. Hamlet has not established that Officer Hoxie was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]," and that he also drew that inference. *Farmer*, 511 U.S. at 837. Mr. Hamlet concedes that Officer Hoxie was not aware of the potato chip bag of feces in the shower before Mr. Hamlet entered. (DE 112-1 at 34:19–25); (DE 115 at 20). At his deposition, Mr. Hamlet testified that the potato chip bag was not visible from outside the shower, and he admits in his Affidavit that Officer Hoxie "never check[ed] to see [if] the shower [was] clean." (DE 112-1 at 34:19–25); (DE 115 at 5). Moreover, Mr. Hamlet does not claim that he ever told Officer Hoxie that the feces from the potato chip bag had become stuck to open cuts on his ankles, and he concedes that he never asked Officer Hoxie for towels or linens to clean himself. (DE 112 at 43:16–18). Thus, even if one infers that Officer Hoxie removed Mr. Hamlet's clothes and bedding from his cell to prevent Mr. Hamlet from cleaning himself (and the record does not support that inference), Mr. Hamlet still cannot demonstrate that Officer Hoxie was aware of Mr. Hamlet's risk of infection. Accordingly, Mr. Hamlet cannot satisfy the subjective prong because no reasonable juror could infer that Officer Hoxie was aware of a risk of harm to Mr. Hamlet and deliberately disregarded that risk.

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Defendant's Motion for Summary

Judgment (DE 108) is **GRANTED.** Final Judgement will be entered by separate Order.

SIGNED in Chambers at West Palm Beach, Florida, this 26th day of April, 2021.

/s/ Donald M. Middlebrooks
Donald M. Middlebrooks
United States District Judge

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-11937-CC

LYNN HAMLET,

Plaintiff - Appellant,

versus

MARTIN CORECTIONAL INSTITUTION, et al.,

Defendants,

OFFICER HOXIE,

Defendant - Appellee.

Appeal from the United States District Court for the
Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE WILLIAM PRYOR, Chief Judge, and JILL PRYOR and GRANT, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

APPENDIX D

Relevant Statutory Provision

Ku Klux Klan Act of 1871, Pub. L. No. 42-22 § 1, 17 Stat. 13

Chap. XXII. – *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication"; and the other remedial laws of the United States which are in their nature applicable in such cases.

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