No. _____

In the
Supreme Court of the United States

ANTHONY BERNARD WINGFIELD,
Applicant,

v.

UNKNOWN GARNER, CO; UNKNOWN HINEJOSA, CO; UNKNOWN ELLIS, SERGEANT, MICHAEL UNIT; UNKNOWN GARNER, SERGEANT, MICHAEL UNIT; UNKNOWN CUNNINGHAM, SERGEANT, MICHAEL UNIT; UNKNOWN MARSHON, CO, MICHAEL UNIT,
Respondents.

APPLICATION DIRECTED TO THE HONORABLE SAMUEL A. ALITO, JR. FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.2, Applicant Anthony Bernard Wingfield respectfully requests a 60-day extension of time, to and including September 5, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The Fifth Circuit entered its judgment on April 8, 2025. Attachment ("Op."). Without an extension, the time for filing a petition for a writ of certiorari will expire on July 7, 2025. Jurisdiction to review the judgment of the Fifth Circuit in this case will be invoked under 28 U.S.C. § 1254(1).

This case raises an important and recurring question regarding the proper liability standard to recover damages under the Americans with Disabilities Act (ADA). In the decision below, the Fifth Circuit affirmed dismissal of Mr. Wingfield's disability discrimination and failure-to-accommodate claims because it was "constrained by precedent" to hold that he failed to sufficiently allege that officials intended to discriminate on the basis of his disability. Op. 11. This decision directly implicates and further entrenches a deep and persistent circuit conflict. A majority of circuits have held that a plaintiff can recover damages under the ADA by showing that a defendant was deliberately indifferent to their federally protected rights. But "[u]nlike other circuits, [the Fifth Circuit] ha[s] not held that deliberate indifference suffices." Op. 10 (quoting *Smith v. Harris County*, 956 F.3d 311, 318 (5th Cir. 2020)). Thus, "[e]ven assuming [Mr. Wingfield's allegations] amount[ed] to deliberate indifference," Mr. Wingfield would have alleged "not enough." *Id.* Under Fifth

Circuit precedent, Mr. Wingfield's claim failed as a matter of law because he did not allege "that any alleged discrimination was *intended* to discriminate against him *because of* his disability." Op. 11.

This circuit conflict implicates an issue of profound importance for Americans with disabilities. Unless this Court intervenes, the standard for liability under the ADA will continue to differ depending on the circuit in which a plaintiff suffers harm. This Court's guidance is therefore needed to correct inconsistency in the administration of federal anti-discrimination laws. This forthcoming petition for certiorari will provide an excellent vehicle for this Court to clarify the standard for money-damages liability under the ADA.

Undersigned counsel was recently retained to represent Applicant before this Court. Additional time is requested so that new counsel may review the record, narrow the issues for this Court's consideration, and adequately prepare and file a petition for certiorari.

BACKGROUND

1. Title II of the Americans with Disabilities Act (ADA) requires public entities to provide reasonable accommodations for people with disabilities. *See Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 170 (2017). It also prohibits discrimination or exclusion from public services "by reason of" disability. 42 U.S.C. § 12132.

Like the Rehabilitation Act, the ADA "expressly incorporates" the same "rights and remedies provided under Title VI" of the Civil Rights Act of 1964. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022). The ADA provides that "[t]he remedies, procedures, and rights set forth in" the Rehabilitation Act "shall be

the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of " the ADA. 42 U.S.C § 12133. And the Rehabilitation Act, in turn, states that "[t]he remedies, procedures, and rights set forth" in Title VI "shall be available to any person aggrieved by" disability discrimination inflicted by a person or entity subject to the Rehabilitation Act. 29 U.S.C. § 794a(a)(2).

Accordingly, the ADA follows Title VI in "authoriz[ing] individuals to seek redress for violations" by "bringing suits" for "money damages." *Fry*, 580 U.S. at 160. To recover compensatory damages, every circuit that has considered the issue requires "a showing of intentional discrimination." *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 262 (3d Cir. 2013) (collecting cases). Because "private individuals [may] not recover compensatory damages under Title VI except for intentional discrimination," *Alexander v. Sandoval*, 532 U.S. 275, 282-83 (2001), and because the ADA incorporates Title VI's rights and remedies, ADA plaintiffs may not obtain damages without proving that the defendant acted with a wrongful state of mind. *See S.H.*, 729 F.3d at 262.

"'[A] majority' of the Courts of Appeals to have weighed in on the question . . . find the requirement to show 'intentional discrimination' satisfied by proof that the defendant acted with 'deliberate indifference.'" *A.J.T. v. Osseo Area Schools*, 605 U.S. ___, slip op. at 7 (2025) (No. 24-249) (citation omitted). Those courts have done so based on this Court's precedent adopting a deliberate indifference standard under Title IX, which was likewise modeled after Title VI. *See id.* at 7 n.4. This "deliberate

indifference" test requires that a defendant ignore a "strong likelihood" that the challenged action (or inaction) would "result in a violation of federally protected rights." *Meagley v. City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011). In contrast, the Fifth Circuit has held that ADA plaintiffs must prove "something more than 'deliberate indifference' to show intent." *Miraglia v. Bd. of Supervisors of La. State Museum*, 901 F.3d 565, 575 (5th Cir. 2018).

2. Applicant Anthony Wingfield is a "below-the-knee amputee" incarcerated in a Texas state prison. Op. 2, 10. Mr. Wingfield wears special shoes that "were prescribed as medically necessary" for effective ambulation. *Id.* at 2. In December 2020, correctional officers confiscated Mr. Wingfield's shoes. *Id.* at 6. Mr. Wingfield told officers on multiple occasions that "medical staff gave him the shoes and that he needed them because he wore a prothesis and had no other appropriate footwear." *Id.* at 7. But the officers proceeded in a "bullying" manner, "asserting power over" Mr. Wingfield by refusing to return the shoes. *Id.* at 7, 10. In one instance, an officer justified refusing Mr. Wingfield's renewed request for his shoes by remarking that "she could do whatever she wanted." *Id.* at 10. Officers also rebuffed his requests for alternate mobility aids, such as crutches. *Id.* at 2. Despite Mr. Wingfield's many requests, they returned his shoes only after Mr. Wingfield "fil[ed] multiple complaints" with the prison. *Id.* at 7. Later in July 2021, officers confiscated his shoes again, even though the officers had "s[een] medical paperwork of Wingfield's amputation and medical need for the shoes." *Id.* And, in addition to

confiscating his shoes, officers also "denied Wingfield access for thirty-eight days to an appointment at the limb clinic to get his prosthesis altered." *Id.* at 8.

In all, Mr. Wingfield was "forc[ed] [] to walk barefoot" for almost two months and was denied medical care for over one month. *Id.* at 2, 8. During this period, he was forced "to walk through urine and fecal matter in socks while attempting to go to the bathroom." *Id.* at 6. He was "unable to go outside and get food whenever it rained," *id.*, and thus "missed meals." *Id.* at 12. And he suffered pain because he was unable to see medical professionals to alter his prosthesis. *Id.* at 9.

After exhausting administrative remedies, Mr. Wingfield sued the officers in federal court, proceeding pro se. *Id.* at 2. Mr. Wingfield's complaint alleged constitutional and statutory violations, including disability discrimination and failure-to-accommodate claims under the ADA. *Id.* The officers moved to dismiss. *Id.* A magistrate judge recommended that Mr. Wingfield's complaint be dismissed. As to Mr. Wingfield's claims under the ADA, the magistrate judge found that Mr. Wingfield "did not 'allege facts from which a reasonable fact-finder could conclude that the discrimination was intentional.'" *Id.* at 3 (citation omitted). The district court adopted the magistrate judge's report and recommendation over Mr. Wingfield's objections and dismissed his claims. *Id.* Mr. Wingfield appealed. *Id.*

In an unpublished, per curiam opinion, the Fifth Circuit affirmed dismissal of Mr. Wingfield's claims. *Id.* at 1, 12. As to his ADA claims, the Fifth Circuit held that Mr. Wingfield's allegations failed to state a claim because he did not allege facts showing that the officers intended to discriminate against him. *Id.* at 11. The panel

noted that "[e]ven assuming [the officers' actions] amount[ed] to deliberate indifference once Wingfield had explained his medical needs and an officer had seen medical documentation, it is still not enough." *Id.* at 10. That was because "[u]nlike other circuits, [the Fifth Circuit] ha[s] not held that deliberate indifference suffices." *Id.* (quoting *Smith*, 956 F.3d at 318). "Therefore, given a lack of evidence that any alleged discrimination was *intended* to discriminate against [Mr. Wingfield] *because of* his disability, [the panel was] constrained by precedent to deny" Mr. Wingfield's claims for money damages. *Id.* at 11.

REASONS FOR GRANTING THE APPLICATION

1. As the opinion below acknowledged, the lower courts are split on what standard applies to damages claims under the ADA. *See* Op. 10. This split of authority produces troubling disparities for disability-discrimination plaintiffs. In a majority of circuits, plaintiffs can secure compensatory damages under the ADA on a showing of deliberate indifference. *See A.J.T. v. Osseo Area Schools*, 605 U.S. ___, slip op. at 7 (2025) (No. 24-249). But in the Fifth Circuit, as the opinion below explicitly held, deliberate indifference is "not enough." Op. 10. That disparity is meaningful. Here, Mr. Wingfield alleged facts that likely would satisfy a deliberate indifference standard and, in a majority of circuits, his claim likely would have survived a motion to dismiss. But the Fifth Circuit denied relief because it was "constrained by precedent." *Id.* at 12.

2. The Fifth Circuit's approach is wrong. As a majority of circuits have held, the deliberate indifference standard is correct because it is best "suited to the remedial goals" of the ADA. *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d

248, 264 (3d Cir. 2013). "Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect." *Alexander v. Choate*, 469 U.S. 287, 295 (1985). And as this Court "has reasoned, Congress was keenly aware of the evils of benign neglect when it enacted the federal antidiscrimination statutes, and '[f]ederal agencies and commentators on the plight of the handicapped similarly have found that discrimination against the handicapped is primarily the result of apathetic attitudes rather than affirmative animus.'" *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 279 (D.D.C. 2015) (Jackson, J.) (quoting *Choate*, 469 U.S. at 296). Thus, the ADA is "targeted to address 'more subtle forms of discrimination' than merely 'obviously exclusionary conduct[,]' " and it is "[c]onsistent with these motivations" to employ "a standard of deliberate indifference, rather than one that targets animus" in this context. *S.H.*, 729 F.3d at 264 (quoting *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 945 (9th Cir. 2011)). By requiring a heightened showing, the Fifth Circuit's test insulates much of the activity Congress sought to remedy.

3. Mr. Wingfield respectfully requests a 60-day extension within which to prepare a petition for certiorari in this case. Undersigned counsel did not serve as Mr. Wingfield's counsel in the Fifth Circuit and was only recently retained to assist in the evaluation and preparation of a petition for a writ of certiorari. Undersigned counsel will be heavily engaged with the press of other matters over the coming weeks, including various briefs due in this Court and federal and state courts of appeals, as well as family travel in early July. A 60-day extension of time is

warranted to permit counsel to research and, as appropriate, refine the issues for this Court's review and prepare a petition that addresses the important questions raised by this case in the most direct and efficient manner for the Court's consideration. The additional time also will assist potential amici in considering this case.

4. The extension requested would not work any meaningful prejudice on any party. If the Court grants certiorari, the case may be briefed and argued next Term.

CONCLUSION

Accordingly, Applicant respectfully requests a 60-day extension of time, to and including September 5, 2025, within which to file a petition for a writ of certiorari.

June 23, 2025

Respectfully submitted,

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ATTACHMENT

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
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No. 23-40547

ANTHONY BERNARD WINGFIELD,

Plaintiff—Appellant,

versus

UNKNOWN GARNER, CO; UNKNOWN HINEJOSA, CO; UNKNOWN ELLIS, *Sergeant, Michael Unit*; UNKNOWN GARNER, *Sergeant, Michael Unit*; UNKNOWN CUNNINGHAM, *Sergeant, Michael Unit*; UNKNOWN MARSHON, *CO, Michael Unit*,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:21-CV-320

Before GRAVES, ENGELHARDT, and OLDHAM, *Circuit Judges*.

PER CURIAM:[*]

Anthony Bernard Wingfield, an imprisoned man who had his medically-prescribed shoes repeatedly taken by correctional officers in a Texas state prison, appeals the dismissal of his suit brought pursuant to 42

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

U.S.C. § 1983, the Americans with Disabilities Act (ADA), and the Eighth Amendment to the United States Constitution. We AFFIRM.

FACTS AND PROCEDURAL HISTORY

Anthony Bernard Wingfield is imprisoned in the state of Texas. Wingfield, who has one leg amputated below the knee, alleges correctional officers in the prison confiscated his medically-approved shoes twice, forcing him to walk barefoot, miss meals, and suffer thirty-eight days without being able to attend an appointment at the brace and limb clinic, all despite him showing the officers his prosthesis and explaining the shoes were prescribed as medically necessary. When Wingfield requested that the officers contact the medical team so that he could at least have crutches to aid with his mobility, the officers refused.

After exhausting state administrative remedies, Wingfield filed a pro se civil complaint, bringing claims and seeking damages under 42 U.S.C. § 1983, the Americans with Disabilities Act (ADA), and the Eighth Amendment. The defendant correctional officers moved to dismiss Wingfield's complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief may be granted.

The magistrate judge recommended dismissing all official-capacity claims because the Eleventh Amendment bars a suit in federal court against a state unless the sovereign has unequivocally waived its immunity, and no waiver or relevant exception existed. The magistrate judge also recommended dismissing all individual-capacity claims. As far as the Eighth Amendment deliberate-indifference claim, the magistrate judge found that the allegations "simply do not amount to cruel and unusual punishment" because the facts do not support a finding that he suffered any physical injury or was in substantial risk of serious harm. Regarding his ADA claim, the

magistrate judge found Wingfield did not "allege any facts from which a reasonable fact-finder could conclude that the discrimination was intentional," and he thus failed to state a claim. Over Wingfield's objections, the district court adopted the magistrate judge's report and recommendation and dismissed Wingfield's claims. This timely appeal followed.

STANDARD OF REVIEW

We review dismissals under Rule 12(b)(1) and 12(b)(6) de novo. *Smith v. Hood*, 900 F.3d 180, 184 (5th Cir. 2018). "When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits." *Block v. Tex. Bd. of L. Examiners*, 952 F.3d 613, 616–17 (5th Cir. 2020) (quotation marks omitted).

We properly dismiss a case for lack of subject matter jurisdiction under Rule 12(b)(1) "when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (quotation marks omitted).

"Under the 12(b)(6) standard, all well-pleaded facts are viewed in the light most favorable to the plaintiff, but plaintiffs must allege facts that support the elements of the cause of action in order to make out a valid claim." *City of Clinton v. Pilgrim's Pride Corp.*, 632 F.3d 148, 152–53 (5th Cir. 2010). "The well-pleaded facts must permit the court 'to infer more than the mere possibility of misconduct.'" *Hale v. King*, 642 F.3d 492, 499 (5th Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)).

DISCUSSION

A

Defendants assert that there is no subject matter jurisdiction to entertain claims against them in their official capacities because they are entitled to sovereign immunity.

"State sovereign immunity prohibits 'private suits against nonconsenting states in federal court.'" *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 179 (5th Cir. 2020) (quoting *City of Austin v. Paxton*, 943 F.3d 993, 997 (5th Cir. 2019)). "State officials and agencies enjoy immunity when a suit is effectively against the state. Unless waived by the state, abrogated by Congress, or an exception applies, the immunity precludes suit." *Id.* (internal citation omitted). This immunity extends to state prisons, which are state agencies. *See Alabama v. Pugh*, 438 U.S. 781, 781 (1978) (per curiam) (collecting authority).

Here, sovereign immunity extends to the individual officers who were acting in their official capacities because it is effectively a suit against the state agency, and in turn, the state itself. The state has not waived its immunity. Nor has Congress abrogated state sovereign immunity with § 1983. *See NiGen Biotech, L.L.C. v. Paxton*, 804 F.3d 389, 394 (5th Cir. 2015).

The remaining inquiry is whether an exception applies. Wingfield invokes the *Ex parte Young* exception. 209 U.S. 123 (1908) (allowing suits for prospective injunctive or declaratory relief against a state official acting in violation of federal law). However, Wingfield did not request injunctive or declaratory relief; he only requested damages for past conduct.

As there is no waiver, abrogation, or relevant exception, we lack subject matter jurisdiction to review Wingfield's § 1983 and Eighth Amendment official-capacity claims against the correctional officers.

Wingfield's official-capacity claims brought pursuant to Title II of the ADA must also be dismissed on sovereign immunity grounds. Even though Congress abrogated state sovereign immunity with Title II, it only did so validly "insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violates the Fourteenth Amendment." *United States v. Georgia*, 546 U.S. 151, 159 (2006) (original emphasis). As we discuss in more detail below, Wingfield fails to show an actual violation, so his official-capacity claims under Title II are also appropriately dismissed. *See Block*, 952 F.3d at 619 ("Because [Plaintiff] has alleged no conduct that violates Title II, [Defendant] is entitled to Eleventh Amendment immunity.").

B

The Eighth Amendment requires prison officials to "provide humane conditions of confinement" by taking "reasonable measures to guarantee the safety of the inmates" and by ensuring "that inmates receive adequate food, clothing, shelter, and medical care." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal quotation marks and citation omitted).

To state an Eighth Amendment claim, a plaintiff must allege that: (1) the deprivation was objectively "sufficiently serious" so that the prison official's act or omission caused "the denial of the minimal civilized measure of life's necessities," and (2) the prison official who caused the alleged deprivation acted, subjectively, with "deliberate indifference to inmate health or safety." *Id.* at 834, 837 (quotation marks omitted).

To satisfy the subjective standard, an "official 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 837. However, "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *See Williams v.*

Hampton, 797 F.3d 276, 288 (5th Cir. 2015) (en banc) (quoting *Farmer*, 511 U.S. at 842).

1

In *Farmer*, the Supreme Court explained that "prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of the inmates.'" 511 U.S. 825 at 832 (quoting *Hudson v. Palmer*, 468 U.S. 517, 526–27 (1984)).

Wingfield alleges that he was unable to go outside and get food whenever it rained because the correctional officers took away his shoes on December 22, 2020, and refused to return them until February 11, 2021. However, it is unclear that Wingfield did not receive adequate food; the record fails to show how often he missed meals or that he was physically unable to go outside to retrieve the meals without having his medically-approved shoes.

Wingfield had to walk through urine and fecal matter in socks while attempting to go to the bathroom. In *Gates v. Cook*, 376 F.3d 323 (5th Cir. 2004), we concluded that living in conditions with crusted fecal matter, urine, dried ejaculate, peeling and chipping paint, and old food particles on the walls "would present a substantial risk of serious harm to the inmates." *Id.* at 338. Because the "officials ha[d] displayed a deliberate indifference," we upheld the injunctive relief the district court entered for the prisoners as "justified by an Eighth Amendment violation." *Id.* While the conditions outlined by Wingfield are disgusting and unsanitary and fell below the standard a reasonable person would expect in a civilized society, they are not as dire as those in *Gates* and we do not conclude the facts show Wingfield faced a substantial risk of serious harm.

Finally, Wingfield could not go to the brace and limb clinic for thirty-eight days and alleges he suffered because of it. But he provides no detail as to what harm he suffered, or could have suffered, as a result.

Given the facts in the record, we are not convinced that Wingfield has met the objective part of our inquiry.

Next, the subjective inquiry: whether the correctional officers acted with "deliberate indifference to inmate health or safety." *Farmer*, 511 U.S. at 834 (quotation marks omitted). Even construing Wingfield's pleadings liberally because he is a pro se plaintiff, *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006), there is not enough in the record for us to conclude the risks he faced were sufficiently "serious" or "obvious."

On December 22, 2020, when Garner told Wingfield to give up his shoes, he responded that medical staff gave him the shoes and that he needed them because he wore a prosthesis and had no other appropriate footwear. Faced with this information, Garner responded that she could do whatever she wanted, and Wingfield left the area in his socks. Correctional officer Hinejosa stopped Wingfield, who again tried to plead his case, before correctional officer Ellis walked up and Wingfield once again pled his case and showed his prosthesis to no avail, before returning to his building wearing his socks. Because Wingfield managed to walk away without his shoes, it is not clear that Garner, Hinejosa, or Ellis understood that without the shoes Wingfield faced a threat of *serious* harm. After filing multiple complaints, Wingfield's shoes were returned on February 11, 2021.

Wingfield alleges that months later, on July 3, 2021, officer Cunningham confiscated his shoes a second time and refused to contact the medical department—even though he saw medical paperwork of Wingfield's amputation and his medical need for the shoes. This evinces indifference toward Wingfield needing his shoes for general mobility. But to satisfy the

subjective standard, an "official 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." *Farmer*, 511 U.S. at 837 (emphasis added). Wingfield again failed to plead what harm he experienced as a result or what substantial risk of serious harm this situation created. That is not enough to state a claim.

Finally, Wingfield alleges correctional officer Marshon denied Wingfield access for thirty-eight days to an appointment at the limb clinic to get his prosthesis altered. However, there is no evidence he suffered any physical harm due to this delay of medical care. *See Petzold v. Rostollan*, 946 F.3d 242, 249 (5th Cir. 2019). Even inferring that he was less mobile without the shoes, without more-detailed allegations of how this could have or did increase his likelihood of harm, it is difficult to know what harm he could have experienced—and whether it was "serious."

Again, we construe Wingfield's pleadings liberally. Even so, his allegations—even if describing punishment some may colloquially call cruel and unusual—do not show that the potential resulting harm was sufficiently "serious" or "obvious."

As Wingfield has failed to "allege facts that support the elements of the cause of action in order to make out a valid claim," *Pilgrim's Pride*, 632 F.3d at 152–53, his claim was appropriately dismissed.

2

Wingfield also seeks compensation for his pain and suffering.

The Prison Litigation Reform Act provides that "[n]o federal civil action may be brought by a prisoner . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. 1997e(e). The "physical injury" required by § 1997(e) "must be more

than de [minimis], but need not be significant." *Harper v. Showers,* 174 F.3d 716, 719 (5th Cir. 1999) (citation omitted).

Wingfield alleged that he suffered "grave psychological, emotional and physical complexities." This allegation of grave complexities is conclusory and not acceptable. *See Plotkin v. IP Axess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005). Wingfield also alleges he suffered through discomfort due to the delay of his appointment to the brace and limb clinic. But this allegation lacks sufficient facts for us to draw an inference that the pain and discomfort was more than *de minimis*. *Cf. Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997) (concluding that a sore, bruised ear lasting for three days was *de minimis*). Accordingly, it was appropriate to dismiss his claims insofar as they seek compensation for pain and suffering.

C

"The ADA is a federal anti-discrimination statute designed to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." *Delano-Pyle v. Victoria Cnty.*, 302 F.3d 567, 574 (5th Cir. 2002) (cleaned up). This protection extends to state prisoners. *See Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209–10 (1998).

A plaintiff states a claim under Title II of the ADA if he alleges "(1) that he has a qualifying disability; (2) that he is being denied the benefits of services, programs, or activities for which the public entity is responsible, or is otherwise discriminated against by the public entity; and (3) that such discrimination is by reason of his disability." *Hale*, 642 F.3d at 499.

Plaintiffs can also bring a failure-to-accommodate claim. To succeed, the plaintiff must prove that: (1) he is a qualified individual with a disability; (2) the disability and its consequential limitations were known by the covered

entity; and (3) the entity failed to make reasonable accommodations. *Neely v. PSEG Tex., Ltd. P'ship,* 735 F.3d 242, 247 (5th Cir. 2013).

1

We start with the disability-discrimination claim. As a below-the-knee amputee, Wingfield has a qualifying disability. *See* 42 U.S.C. § 12102(1)(A) (establishing that a person is disabled if he has "a physical or mental impairment that substantially limits one or more major life activities").

We are not convinced Wingfield has sufficiently alleged he was denied the benefits of services, programs, or activities. Though he missed some meals, it is unclear how many. Similarly, his medical care was delayed, not denied. *Cf. Georgia*, 546 U.S. at 881 ("[I]t is quite plausible that the alleged deliberate refusal of prison officials to accommodate [plaintiffs'] disability-related needs in such fundamentals as mobility . . . constituted 'exclu[sion] from participation in or . . . deni[al of] the benefits of' the prison's 'services, programs, or activities.'" (third and fourth edits in original) (quoting 42 U.S.C. § 12132)).

However, Wingfield's discrimination claim falters because he fails to sufficiently allege that the correctional officers chose to deny him his shoes "by reason of his disability." Instead, it seems to be indiscriminate, run-of-the-mill bullying by correctional officers asserting power over an inmate—disabled or not.

Even assuming this amounts to deliberate indifference once Wingfield had explained his medical needs and an officer had seen medical documentation, it is still not enough. "Unlike other circuits, we have not held that deliberate indifference suffices." *Smith v. Harris Cnty.*, 956 F.3d 311, 318 (5th Cir. 2020) (citing *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 262–63 (3d Cir. 2013) (collecting, and agreeing with, cases from five other circuits)). In our circuit, "[a] plaintiff can recover money damages only

if he proves the defendant committed a violation of the ADA . . . and that the discrimination was intentional." *Miraglia v. Bd. of Supervisors of La. State Museum*, 901 F.3d 565, 574 (5th Cir. 2018). Therefore, given a lack of evidence that any alleged discrimination was *intended* to discriminate against him *because of* his disability, we are constrained by precedent to deny his requested relief: money damages on a disability-discrimination claim.

2

Next, his failure-to-accommodate claim. As stated, Wingfield is a qualified individual with a disability because he is an amputee.

As noted above, it is unclear if the correctional officers originally understood the limitations that not having his shoes would impose on Wingfield given his disability. However, Wingfield has alleged that Cunningham re-confiscated his shoes and refused to contact the medical department—even though he saw medical paperwork of Wingfield's amputation and his medical need for the shoes. To the extent that the first incidents may not fall under the reach of the ADA, this one may because at that point we can reasonably infer that Cunningham knew that Wingfield's disability limited his mobility creating a medical need for his shoes.

Finally, Wingfield has alleged that though letting him keep his sneakers or returning them requires minimal effort, the prison ignored his complaint and refused despite his medical need. *Cf. Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006) ("A showing of deliberate indifference requires the prisoner to submit evidence that prison officials 'refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs.'" (quoting *Domino v. Tex. Dep't of Crim. Just.*, 239 F.3d 752, 756 (5th Cir. 2001)). However, it is unclear that the prison and its staff's actions denied Wingfield "*meaningful access* to the benefit[s] that the

[prison] offers." *Alexander v. Choate*, 469 U.S. 287, 301 (1985) (emphasis added). Yes, he missed meals, but it is unclear how many or precisely why, and though his visit to the brace and limb clinic was delayed, he eventually visited the clinic.

Regardless, in this circuit, "[e]ven when plaintiffs successfully prove a disability-discrimination or a failure-to-accommodate claim, they 'may only recover compensatory damages upon a showing of intentional discrimination.'" *Smith*, 956 F.3d at 318 (quoting *Delano-Pyle*, 302 F.3d at 574; and citing *Miraglia*, 901 F.3d at 574). Again, absent any evidence that the officers acted with *intent* to discriminate, we are constrained by our precedent to deny Wingfield's sought-after relief: damages based on a failure-to-accommodate claim.

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For the foregoing reasons, we AFFIRM the district court's dismissal of all claims.