No. _____

In the Supreme Court of the United States

ANTHONY BERNARD WINGFIELD,
Petitioner,

v.

UNKNOWN GARNER, CO, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Title II of the Americans with Disabilities Act (ADA) requires public entities to ensure that people with disabilities are not, by reason of their disability, subjected to discrimination or excluded from public services and programs. As this Court recently recognized, all circuits require plaintiffs seeking damages for ADA violations to show "'intentional discrimination,'" and a "'majority'" of circuits have held that a plaintiff can satisfy that requirement by showing that the defendant acted with "'deliberate indifference'" to the plaintiff's federally protected rights. *A.J.T. v. Osseo Area Schs.*, 605 U.S. 335, 344-45 (2025). The Fifth Circuit, however, has openly departed from that majority view and held that "deliberate indifference" is "not enough." App. 11a. Instead, plaintiffs must satisfy a heightened standard that "'require[s] *something more* than deliberate indifference,'" such as "'discriminatory motive'" or "animus." *J.W. v. Paley*, 81 F.4th 440, 450-51 (5th Cir. 2023) (emphasis added).

As the Fifth Circuit recognized below, that heightened standard dictated the outcome in this case brought by petitioner Anthony Wingfield, a below-the-knee amputee who was unable to access basic prison services after prison officials confiscated and knowingly withheld his medically necessary footwear.

The question presented is:

Whether plaintiffs seeking damages under Title II of the ADA must demonstrate something more than the defendant's deliberate indifference to the plaintiff's federally protected rights.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner (plaintiff-appellant below) is Anthony Bernard Wingfield.

Respondents (defendants-appellees below) are Unknown Garner, CO; Unknown Hinejosa, CO; Unknown Ellis, Sargeant, Michael Unit; Unknown Garner, Sergeant, Michael Unit; Unknown Cunningham, Sergeant, Michael Unit; and Unknown Marshon, CO, Michael Unit.

RELATED PROCEEDINGS

United States Court of Appeals (5th Cir.): *Wingfield v. Garner*, No. 23-40547 (Apr. 8, 2025)

United States District Court (E.D. Tex.): *Wingfield v. Garner*, No. 21-cv-320 (Sept. 7, 2023)

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PETITION FOR A WRIT OF CERTIORARI

Anthony Bernard Wingfield respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-13a) is available at 2025 WL 1040649. The district court's order adopting the magistrate judge's report and recommendation (App. 14a-16a) is available at 2023 WL 5835941. The magistrate judge's report and recommendation (App. 17a-35a) is available at 2023 WL 5839585.

JURISDICTION

The court of appeals entered judgment on April 8, 2025. On June 26, 2025, Justice Alito extended the time to file a petition for a writ of certiorari to August 6, 2025. On July 22, 2025, Justice Alito further extended the time to file a petition for a writ of certiorari to August 26, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the petition appendix. App. 36a-43a.

INTRODUCTION

This case raises an important and recurring question regarding the standard for recovering damages under Title II of the Americans with Disabilities Act (ADA). There is a lopsided 8-1 circuit split on the issue, which the Court touched on last Term in *A.J.T. v. Osseo Area Schools*, 605 U.S. 335 (2025). This case presents an opportunity to resolve the split and ensure that federal courts across the country apply the same rule.

As the Court recognized, all circuits have held that plaintiffs seeking compensatory damages under the ADA must establish "intentional discrimination." *Id.* at 344. But there is an entrenched circuit split over the proper standard for proving such intent. A "'majority'" of circuits have adopted a "'deliberate indifference'" standard, which requires proof that the defendant disregarded a strong likelihood that the challenged action would result in the plaintiff's exclusion due to his disability. *Id.* at 344-45. But in the Fifth Circuit—and *only* in the Fifth Circuit—"deliberate indifference" is "not enough." App. 11a. Instead, that court applies a heightened standard requiring plaintiffs to show "'*something more* than deliberate indifference,'" such as "'discriminatory motive'" or "animus." *J.W. v. Paley*, 81 F.4th 440, 450-51 (5th Cir. 2023) (emphasis added). This entrenched conflict has been widely acknowledged, including by the Fifth Circuit in this case. App. 11a-12a. This Court should now resolve the split.

The Fifth Circuit's position is an outlier for a reason—it is fundamentally wrong. As the Solicitor General forcefully argued to this Court in *A.J.T.* (and as the Department of Justice has argued to courts

around the country), deliberate indifference is sufficient to establish intent in this context. That standard respects the rationale for imposing the intent requirement, which ensures that defendants have notice of likely ADA violations before facing monetary liability for past conduct. At the same time, it avoids atextually and artificially narrowing the ADA's broad scope.

The Fifth Circuit has never offered a sound justification for its heightened, more-than-deliberate-indifference standard. Instead, it has relied on a conclusory, unreasoned assertion in a case from more than two decades ago that "[t]here is no 'deliberate indifference' standard applicable to public entities for purposes of the ADA." *Delano-Pyle v. Victoria County*, 302 F.3d 567, 575 (5th Cir. 2002). And yet, even as eight other circuits explained the error of that assertion, the Fifth Circuit has refused to give it up. Only this Court can put an end to the division and correct the Fifth Circuit's misguided approach.

The Fifth Circuit's stringent standard imposes a uniquely onerous burden on plaintiffs, closing the courthouse doors to many who would otherwise have viable claims. This case exemplifies the problem: Anthony Wingfield, a below-the-knee amputee, was unable to access basic prison services after prison officers confiscated his medically necessary shoes for several weeks in what the Fifth Circuit called an extended act of "bullying." App. 11a. That deprivation forced Mr. Wingfield to miss meals, walk barefoot or in socks through disgusting conditions to access prison facilities, and forgo medical treatment at the prison's brace and limb clinic. Even though the officers were well aware of Mr. Wingfield's disability and associated need for the shoes—and nonetheless

refused to provide them—the Fifth Circuit was "constrained by precedent" to conclude that such "deliberate indifference" is "not enough" under its heightened standard. *Id.* at 11a-13a.

The question presented is exceptionally important and merits review. The ADA is a foundational civil rights statute protecting tens of millions of people with disabilities. The proper standard for obtaining damages is fundamental to the ADA's enforcement scheme. This Court should grant certiorari to resolve the circuit split and restore uniformity to the ADA's protections.

STATEMENT OF THE CASE

A. Legal Background

1. Enacted in 1990, the ADA aims "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," along with "clear, strong, consistent, enforceable standards addressing [such] discrimination." Pub. L. No. 101-336, § 2(b)(1)-(2), 104 Stat. 327, 329 (codified at 42 U.S.C. § 12101(b)(1)-(2)). Title II of the ADA applies that mandate to public entities, providing in Section 202 that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.[1]

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[1] The ADA defines "public entity" as encompassing "any department, agency, special purpose district, or other instrumentality of a State or States or local government,"

As that broadly worded provision makes clear, the ADA is designed to "root out disability-based discrimination" that arises not only from subjecting people with disabilities to unfavorable treatment, but also from failing to ensure that people with disabilities are able "to participate equally to all others" in public services and programs. *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 170 (2017). The ADA thus requires public entities to provide "reasonable accommodations" to people with disabilities to avoid such discrimination. *Id.* at 159-60, 170; *see A.J.T.*, 605 U.S. at 357-58 (Sotomayor, J., concurring).

In that respect, the ADA mirrors Section 504 of the Rehabilitation Act of 1973—a similarly worded statute that applies to any federally funded "program or activity," 29 U.S.C. § 794(a), and likewise requires "'reasonable' modifications to existing practices in order to 'accommodate' persons with disabilities," *Fry*, 580 U.S. at 160 (quoting *Alexander v. Choate*, 469 U.S. 287, 299-300 (1985)). Indeed, the Rehabilitation Act served as the model for Title II of the ADA, and the same liability standards generally apply under both statutes. *See, e.g.*, 42 U.S.C. § 12201(a) (adopting standards set forth in Rehabilitation Act regulations, which expressly require "reasonable accommodations"); *cf. Fry*, 580 U.S. at 159 (noting that the two statutes impose the "same prohibition").

2. Section 203 of the ADA creates a scheme of private "[e]nforcement" for Title II violations by expressly incorporating "[t]he remedies, procedures,

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42 U.S.C. § 12131(1)(B), including (as relevant here) "[s]tate prisons," *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998).

and rights set forth in" the Rehabilitation Act. 42 U.S.C. § 12133. And the Rehabilitation Act, in turn, expressly incorporates "[t]he remedies, procedures, and rights set forth" in Title VI of the Civil Rights Act of 1964. 29 U.S.C. § 794a(a)(2). The ADA and the Rehabilitation Act thus follow Title VI in authorizing "'individuals to seek redress for violations of their substantive guarantees by bringing suits for injunctive relief or monetary damages.'" *A.J.T.*, 605 U.S. at 339; *see Alexander v. Sandoval*, 532 U.S. 275, 279 (2001).

As this Court recently observed, the courts of appeals "generally agree" on the requirements for obtaining these remedies: While plaintiffs seeking injunctive relief need only establish the defendant's liability under Section 202, plaintiffs seeking "compensatory damages" must satisfy an additional requirement—they must show that the discrimination was "intentional." *A.J.T.*, 605 U.S. at 344.[2]

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[2] The courts of appeals agree that "intent" is not required to "establish a statutory violation and obtain injunctive relief under the ADA." *A.J.T.*, 605 U.S. at 344. That is because, unlike other antidiscrimination statutes, the text of the ADA's liability provision requires public entities to affirmatively ensure that people with disabilities are not, "by reason of" their disabilities, excluded from participating in or benefitting from covered programs and services. 42 U.S.C. § 12132. That language, which merely requires a "causal link" between the disability and the exclusion, *A.J.T.*, 605 U.S. at 356 (Sotomayor, J., concurring), does not require intent. *See Cinnamon Hills Youth Crisis Ctr., Inc. v. Saint George City*, 685 F.3d 917, 922-23 (10th Cir. 2012) (Gorsuch, J.) (explaining that when individuals with disabilities are denied reasonable accommodations, they are excluded "*because* of conditions created by their disabilities," even without intent).

That damages-specific intent requirement derives from Section 203's cross-reference to the Rehabilitation Act (and the Rehabilitation Act's further cross-reference to Title VI). *See* 42 U.S.C. § 12133; 29 U.S.C. § 794a(a)(2). Both the Rehabilitation Act and Title VI are so-called "Spending Clause legislation," enacted pursuant to Congress's "power under the Spending Clause . . . to place conditions on the grant of federal funds." *Barnes v. Gorman*, 536 U.S. 181, 185-86, 189 n.3 (2002) (citing U.S. Const. art. I, § 8, cl. 1). In the Spending Clause context, the Court has held that monetary damages are available only when the funding recipient is on "'notice'" of the statutory violation, and thus only "for *intentional* violations" of the statute. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218-19 (2022) (emphasis added). Because Section 203 of the ADA incorporates the Rehabilitation Act's and Title VI's remedies, it incorporates that Spending Clause-based intent requirement for damages as well. *See Barnes*, 536 U.S. at 189 n.3.

The courts of appeals are divided, however, on the proper standard for demonstrating intent. As explained further below, a lopsided "'majority'" have adopted a "'deliberate indifference'" standard, which requires proof that the "defendant disregarded a 'strong likelihood' that the challenged action would 'result in a violation of federally protected rights.'" *A.J.T.*, 605 U.S. at 344-45 (citations omitted). The Fifth Circuit, by contrast, has consistently rejected the deliberate indifference standard and demanded "'something more than deliberate indifference,'" such as "'discriminatory motive'" or "animus." *J.W.*, 81

F.4th at 450-51; App. 11a-12a; *see infra* at 12-24 (describing circuit split).

B. Factual And Procedural Background

1. Petitioner Anthony Wingfield is a below-the-knee amputee incarcerated in a Texas state prison. App. 2a. Mr. Wingfield relies on special shoes that "were prescribed as medically necessary" to facilitate effective ambulation and access to basic prison services. *Id.* Yet, in what the court below charitably described as "bullying," correctional officers repeatedly confiscated Mr. Wingfield's shoes for weeks despite knowledge of his prosthesis and his need for the shoes. *Id.* at 11a-12a. As a result of this bullying, Mr. Wingfield was forced to "walk barefoot" in "disgusting and unsanitary" conditions, "miss meals," and skip medical treatment at the prison's "brace and limb clinic." *Id.* at 2a, 7a.

Correctional officers first confiscated his shoes in December 2020. *Id.* at 8a. Mr. Wingfield told the officers that "medical staff gave him the shoes and that he needed them because he wore a prosthesis and had no other appropriate footwear." *Id.* But the officers ignored him, with one officer declaring that "she could do whatever she wanted." *Id.* The officers also rebuffed his requests for alternate mobility aids, such as crutches. *Id.* at 2a. Despite Mr. Wingfield's many pleas, his shoes were not returned until February 2021—and only after he filed "multiple complaints" with the prison. *Id.* at 8a.

The relief was short-lived. In July 2021, his shoes were confiscated again, this time by an officer who specifically "saw medical paperwork of Wingfield's amputation and his medical need for the shoes." *Id.* And yet, despite that knowledge, the officer

confiscated his shoes and "refused to contact the medical department." *Id.*

All told, the prison deprived Mr. Wingfield of his medically necessary shoes for several weeks, significantly hindering his ability to access basic prison services. For example, he was forced "to walk through urine and fecal matter in socks while attempting to go to the bathroom." *Id.* at 7a. He was "unable to go outside and get food whenever it rained," causing him to "miss meals." *Id.* at 2a, 6a. And he was unable to "access" the prison's "brace and limb clinic" to "get his prothesis altered" for 38 days, which caused even more discomfort and pain. *Id.* at 8a-10a.

2. After exhausting his administrative remedies, Mr. Wingfield filed a pro se complaint against respondents in federal court. *Id.* at 2a. Mr. Wingfield asserted constitutional and statutory claims, including (as relevant here) claims seeking damages for the prison's violations of the ADA. *Id.*

Respondents moved to dismiss, asserting that Mr. Wingfield's ADA claims are barred by state sovereign immunity. *Id.* Although the ADA expressly abrogates sovereign immunity, 42 U.S.C. § 12202, this Court has held that the validity of that abrogation must be assessed on a "case-by-case" basis under a three-step test. *United States v. Georgia*, 546 U.S. 151, 159 (2006). The first step in that test—and the only step addressed by respondents—is determining whether "the State's alleged conduct violated Title II." *Id.*; *see* D. Ct. Doc. 31, at 13-14. The courts below accordingly ruled solely on the merits of Mr. Wingfield's ADA claims. *See* App. 5a, 10a-13a; *id.* at 15a.

The district court granted respondents' motion to dismiss, *id.* at 14a-16a, adopting the report and recommendation of a magistrate judge, *id.* at 17a-35a. With respect to Mr. Wingfield's ADA claims, the magistrate judge relied on the Fifth Circuit's rule that plaintiffs seeking "monetary damages" must "prove intentional discrimination," and that "intentional discrimination in this context requires a showing of 'something more than deliberate indifference.'" *Id.* at 30a (internal quotation marks omitted) (quoting *Cadena v. El Paso County*, 946 F.3d 717, 724 (5th Cir. 2020)). In the magistrate judge's view, Mr. Wingfield did not allege "facts from which a reasonable fact-finder could conclude that the discrimination was intentional" under that standard. *Id.* at 31a. The district court agreed with that conclusion. *Id.* at 15a-16a.

3. The Fifth Circuit affirmed. *Id.* at 1a-13a. As to the ADA claims, the court concluded that Mr. Wingfield failed to establish the "*intent* to discriminate" required for seeking damages under the ADA. *Id.* at 11a-13a. The court acknowledged that the officers' actions could "amount[] to deliberate indifference," particularly after Mr. Wingfield "had explained his medical needs and an officer had seen medical documentation." *Id.* at 11a; *see also id.* at 8a (explaining that this conduct "evinces indifference toward Wingfield needing his shoes for general mobility"). And the court acknowledged that, as a result of this indifference, Mr. Wingfield "missed meals" and was unable to access "the brace and limb clinic" for weeks. *Id.* at 8a-9a, 13a.

But the court explained that "[e]ven assuming this amounts to deliberate indifference," that is "not enough" to establish intentional discrimination in the

Fifth Circuit—something more is required. *Id.* at 11a-12a (citing *Smith v. Harris County*, 956 F.3d 311, 318 (5th Cir. 2020)); *see J.W.*, 81 F.4th at 450 & n.37 (collecting cases). Although the court acknowledged that this heightened standard was "'[u]nlike [the rule in] other circuits,'" the court was "constrained by precedent" to apply it here. App. 11a-12a (quoting *Smith*, 956 F.3d at 318); *see also id.* at 13a ("we are constrained by our precedent"). And under that heightened standard, the court held that Mr. Wingfield's damages request failed due to a "lack of evidence" that the "discrimination was *intended* to discriminate against him *because of* his disability." *Id.* at 12a. Instead, the court surmised, the officers "seem[ed]" motivated by a desire to engage in "run-of-the-mill bullying by . . . asserting power over an inmate—disabled or not." *Id.* at 11a. The court accordingly affirmed the dismissal of his case.

REASONS FOR GRANTING THE PETITION

This case readily satisfies the Court's criteria for certiorari. As the court below recognized, the Fifth Circuit's position that deliberate indifference is insufficient to show intentional discrimination conflicts with the rule in the vast majority of other circuits. Eight circuits have held that deliberate indifference is sufficient, and the Fifth Circuit is all alone in persistently holding otherwise.

The Fifth Circuit's outlier position is also deeply flawed. As the Solicitor General explained to this Court just last Term in *A.J.T. v. Osseo Area Schools*, 605 U.S. 335 (2025), the ADA's statutory text and context, as well as this Court's precedent, firmly support the deliberate indifference standard adopted by the majority of circuits. Because this question is

exceptionally important—indeed, fundamental—to the ADA's right of action, and because the Fifth Circuit's uniquely stringent rule closes the courthouse doors to scores of ADA plaintiffs in that circuit, it is imperative that this Court resolve the split and correct the Fifth Circuit's wayward approach. The petition should be granted.

I. The Circuits Are Openly Split Over The Standard For Intentional Discrimination Under Title II Of The ADA

All circuits agree that to obtain damages under Title II of the ADA, "a plaintiff must show intentional discrimination." *A.J.T.*, 605 U.S. at 344. But the circuits are openly divided over the proper standard for demonstrating intentional discrimination. Most circuits apply a deliberate indifference standard. The Fifth Circuit has repeatedly disagreed with that majority view and held that deliberate indifference is not sufficient.

A. Eight Circuits Have Adopted A Deliberate Indifference Standard

As this Court recognized in *A.J.T.*, "'a majority' of the Courts of Appeals to have weighed in on the question" have held that a plaintiff may "show 'intentional discrimination'" by demonstrating "that the defendant acted with 'deliberate indifference.'" 605 U.S. at 344 (citation omitted). Indeed, eight circuits—the Second, Third, Fourth, Seventh, Eighth, Ninth, Tenth, and Eleventh—have squarely adopted the deliberate indifference standard. Two other circuits—the First and Sixth—have assumed that standard's validity. And district courts in the D.C. Circuit have consistently applied it too.

1. The Second, Third, Fourth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits treat deliberate indifference as the proper standard for establishing intentional discrimination.

The Second Circuit has long held that "[t]he standard for intentional violations" of the Rehabilitation Act and the ADA is "'deliberate indifference.'" *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2d Cir. 2009) (quoting *Bartlett v. New York State Bd. of Law Examiners*, 156 F.3d 321, 331 (2d Cir. 1998), *vacated on other grounds*, 527 U.S. 1031 (1999)); *see, e.g.*, *Biondo v. Kaleida Health*, 935 F.3d 68, 73 (2d Cir. 2019). This standard "does not require personal animosity or ill will." *Bartlett*, 156 F.3d at 331. Rather, a plaintiff may establish deliberate indifference by showing the defendant's "knowledge" of the plaintiff's disability-based exclusion or need for a disability-based accommodation and a "fail[ure] to respond adequately." *Loeffler*, 582 F.3d at 276-77; *see Biondo*, 935 F.3d at 75.

The Third Circuit has likewise held that "intentional discrimination . . . may be satisfied by a showing of deliberate indifference." *Furgess v. Pennsylvania Dep't of Corr.*, 933 F.3d 285, 292 (3d Cir. 2019) (citing *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 263 (3d Cir. 2013)); *see, e.g.*, *Durham v. Kelley*, 82 F.4th 217, 225 (3d Cir. 2023). The Third Circuit adopted that test in *S.H.* after surveying the "alternative standards" in the circuit split. 729 F.3d at 262-63. Siding with the "majority" view, the court explained that the deliberate indifference standard properly calibrates the intent requirement within the context of the Rehabilitation Act and the ADA. *Id.* at 263-64.

Applying that standard, the Third Circuit held in *Durham* that a prisoner who was prescribed a walking cane adequately "allege[d] a deliberate indifference claim" against prison officials who were "aware that he had a cane, needed a cane to walk, and was in severe pain without it," and yet "continuously denied his cane and shower accommodations." 82 F.4th at 226. Similarly, in *Furgess*, the court held that an immobile prisoner adequately alleged "deliberate indifference" by prison officials who "knew that [he] required a handicapped-accessible shower" and yet failed to provide one, leaving him unable to shower for months. 933 F.3d at 292.

In the Fourth Circuit, too, "intentional discrimination can be proven via deliberate indifference." *Basta v. Novant Health Inc.*, 56 F.4th 307, 316-17 (4th Cir. 2022). As Judge Wilkinson observed in his opinion for the court in *Basta*, "[m]ost of [its] sister circuits" have adopted that rule, and "there is a substantial interest in preserving a uniform approach to this question." *Id.* at 316. And while *Basta* involved a claim for damages under the Rehabilitation Act, the Fourth Circuit (like other circuits) generally "interprets the ADA and the [Rehabilitation Act] in lockstep." *Id.* Thus, while the Fourth Circuit had previously declined to wade into the "circuit split" over "the appropriate standard" in the ADA context, *Koon v. North Carolina*, 50 F.4th 398, 404 (4th Cir. 2022), courts in the Fourth Circuit have recognized that, after *Basta*, "deliberate indifference is the proper standard" for ADA damages claims as well, *Bartell v. Grifols Shared Servs. NA, Inc.*, No. 21-cv-953, 2023 WL 4868135, at *17 (M.D.N.C. July 31, 2023).

The Seventh Circuit has also held "that a plaintiff can establish intentional discrimination in a Title II damage[s] action by showing deliberate indifference." *Lacy v. Cook County*, 897 F.3d 847, 863 (7th Cir. 2018); *see, e.g.*, *McDaniel v. Syed*, 115 F.4th 805, 823 (7th Cir. 2024). In so holding, the court in *Lacy* analyzed the competing "standards for intentional discrimination" in the circuit split and "agree[d] with the majority" position adopting deliberate indifference, which more "sensibl[y]" aligns with the ADA's aims than a heightened standard. 897 F.3d at 862-63 & n.33.

The Seventh Circuit then applied that standard in *McDaniel*, a case brought by a prisoner with mobility issues who was placed in a cell with stairs that "he often could not climb or descend due to the pain of doing so," which prevented him from participating in "various prison programs and activities, including ones as basic as meals and medical care." 115 F.4th at 824. The court held that the refusal "to place [the plaintiff] in a no-stairs unit, even after knowing he was missing meals and medication dosages," could demonstrate that the prison "was deliberately indifferent to violations of [his] 'federally protected rights' under the ADA and the Rehabilitation Act." *Id.* at 829 (internal alteration omitted) (quoting *Lacy*, 897 F.3d at 863).

The Eighth Circuit too has held that "deliberate indifference [is] the appropriate standard for showing intentional discrimination" under the ADA and the Rehabilitation Act. *Meagley v. City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011); *see, e.g.*, *Hall v. Higgins*, 77 F.4th 1171, 1181 (8th Cir. 2023). In "agree[ing]" with the "other circuits [that] have so ruled," the court stressed that intent "'does not require a showing of

personal ill will or animosity toward the disabled person.'" *Meagley*, 639 F.3d at 389 (citation omitted). Instead, it "can be 'inferred from a defendant's deliberate indifference to the strong likelihood that pursuit of its questioned policies will likely result in a violation of federally protected rights.'" *Id.* (citation omitted).

The Ninth Circuit has long held that "the deliberate indifference standard" supplies "the appropriate test for intentional discrimination under the ADA." *Duvall v. County of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001); *see, e.g.*, *Whitall v. California Dep't of Corr. & Rehab.*, 854 F. App'x 219, 220 (9th Cir. 2021); *A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1204 (9th Cir. 2016); *Lovell v. Chandler*, 303 F.3d 1039, 1056 (9th Cir. 2002). The court reached that conclusion in *Duvall* after recognizing confusion over whether to apply "a 'deliberate indifference' or 'discriminatory animus' standard." 260 F.3d at 1138. Analyzing both tests, the court concluded that it would follow the "example of the circuits" that apply the deliberate indifference standard, which "is better suited to the remedial goals of Title II of the ADA than is the discriminatory animus alternative." *Id.* at 1138-39.

Accordingly, a plaintiff may satisfy the Ninth Circuit's standard by showing that the defendants had "notice of his need for the accommodation" and failed to provide it "despite repeated requests to take the necessary action." *Id.* at 1140. In *Whitall*, for example, the court concluded that the plaintiff inmate properly alleged deliberate indifference by claiming that the prison "knew of [his] need for a functional hearing aid, and on three separate occasions failed to provide a functional hearing aid in a timely manner

despite multiple requests for replacement devices and batteries." 854 F. App'x at 220.

The Tenth Circuit has also adopted the deliberate indifference standard, holding that "intentional discrimination can be inferred from a defendant's deliberate indifference." *Barber ex rel. Barber v. Colorado Dep't of Revenue*, 562 F.3d 1222, 1228-29 (10th Cir. 2009) (quoting *Powers v. MJB Acquisition Corp.*, 184 F.3d 1147, 1153 (10th Cir. 1999)). Like other circuits, the Tenth Circuit's "test for deliberate indifference in the context of intentional discrimination" considers both "'knowledge'" of a substantially likely harm and a "'failure to act.'" *Id.* at 1229.

The Eleventh Circuit has likewise held that under the ADA and the Rehabilitation Act, "a plaintiff may establish intentional discrimination by showing deliberate indifference." *J.S. ex rel. J.S. Jr. v. Houston Cnty. Bd. of Educ.*, 877 F.3d 979, 987 (11th Cir. 2017) (citing *Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 347-48 (11th Cir. 2012)); *see, e.g.*, *Ingram v. Kubik*, 30 F.4th 1241, 1257 (11th Cir. 2022). In holding that "'deliberate indifference' is the appropriate standard," the Eleventh Circuit in *Liese* surveyed the circuit split, noting that "all but one of [its] sister circuits to have addressed the issue"—namely, the Fifth Circuit—had adopted the "deliberate indifference" standard. 701 F.3d at 345. The court then thoroughly analyzed the merits of the competing approaches and concluded that the deliberate indifference standard "best reflects the purposes of the [Rehabilitation Act] while unambiguously providing the notice-and-opportunity requirements of Spending Clause legislation." *Id.* at 345-48.

2. The First, Sixth, and D.C. Circuits have not decided the correct standard for intentional discrimination in published opinions. But cases from those circuits are largely consistent with the majority view.

The First Circuit has assumed without deciding that "a showing of deliberate indifference may suffice to prove" intentional discrimination under the ADA. *Gray v. Cummings*, 917 F.3d 1, 17 (1st Cir. 2019). Accordingly, district courts within the First Circuit routinely apply the deliberate indifference standard. *See, e.g.*, *Gilbert v. Maine Dep't of Health & Hum. Servs.*, 778 F. Supp. 3d 239, 255-56 (D. Me. 2025); *Doe v. Bradshaw*, 203 F. Supp. 3d 168, 191 (D. Mass. 2016). And as the First Circuit explained, that test requires the plaintiff to show that the defendant "knew that [she] had a disability that required [the defendant] to act differently than he otherwise would have acted, yet failed to adjust his behavior accordingly." *Gray*, 917 F.3d at 18.[3]

The Sixth Circuit has repeatedly assumed in unpublished decisions that "proof of deliberate indifference provides the requisite intent." *Douglas v. Muzzin*, No. 21-2801, 2022 WL 3088240, at *8 (6th Cir. Aug. 3, 2022); *see R.K. ex rel. J.K. v. Bd. of Educ. of Scott Cnty.*, 637 F. App'x 922, 925 (6th Cir. 2016); *Hill v. Bradley Cnty. Bd. of Educ.*, 295 F. App'x 740, 742-43 (6th Cir. 2008). Applying that standard in

[3] Although earlier First Circuit precedent seemed to require a "higher showing" such as "discriminatory animus," *S.H.*, 729 F.3d at 263 (citing *Nieves-Márquez v. Puerto Rico*, 353 F.3d 108, 126-27 (1st Cir. 2003)), the First Circuit has since clarified that the question remains "open in [that] circuit," *Gray*, 917 F.3d at 17.

Douglas, the court held that the plaintiff—a prisoner with a "left foot deformity" who required "special orthopedic shoes"—could demonstrate "deliberate indifference" by prison officers who confiscated his shoes and refused to return them for more than a month despite being informed that he needed them. 2022 WL 3088240, at *1-2, *8-12.

Finally, the D.C. Circuit has not had an opportunity to opine on the proper standard for intentional discrimination. But district court decisions from within that circuit have repeatedly held that "the 'deliberate indifference' standard is appropriate" for "establishing intentional discrimination." *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 278-79 (D.D.C. 2015) (K.B. Jackson, J.); *see, e.g.*, *Montgomery v. District of Columbia*, No. 18-cv-1928, 2022 WL 1618741, at *17 (D.D.C. May 23, 2022); *Sacchetti v. Gallaudet Univ.*, 344 F. Supp. 3d 233, 277 (D.D.C. 2018). As then-Judge Jackson explained when analyzing the circuit split, the deliberate indifference standard adopted by the "majority" of circuits best implements the "'remedial goals of the [Rehabilitation Act] and the ADA.'" *Pierce*, 128 F. Supp. 3d at 278-79.

B. The Fifth Circuit's Outlier Position Requires "Something More" Than Deliberate Indifference

The Fifth Circuit has expressly departed from that majority view. "'Unlike other circuits,'" the Fifth Circuit has held that "deliberate indifference" is "not enough" to establish intent. App. 11a (quoting *Smith v. Harris County*, 956 F.3d 311, 318 (5th Cir. 2020)); *see Delano-Pyle v. Victoria County*, 302 F.3d 567, 575 (5th Cir. 2002) ("There is no 'deliberate indifference'

standard applicable to public entities for purposes of the ADA or the [Rehabilitation Act]."). Rather, the Fifth Circuit "'require[s] something more than deliberate indifference'" to satisfy the "intentionality requirement." *J.W. v. Paley*, 81 F.4th 440, 450 (5th Cir. 2023).[4]

Having expressly departed from other circuits, the Fifth Circuit has refused to "'delineate[] the precise contours'" of what "rise[s] to the level of 'something more than deliberate indifference.'" *Id.* at 449-50. But the court has held that its uniquely stringent standard "is met under circumstances revealing a discriminatory motive." *Id.* at 450 (quoting *Wilson v. City of Southlake*, No. 21-10771, 2022 WL 17604575, at *6 (5th Cir. Dec. 13, 2022)). Indeed, as other circuits have recognized, the "alternative" to deliberate indifference in this context is discriminatory motive or animus. *S.H.*, 729 F.3d at 262-63; *see Liese*, 701 F.3d at 344. Recent Fifth Circuit cases have accordingly focused on what "motivated" the conduct and determining whether it reveals not only "indifference" but "ill-will or discriminatory animus." *J.W.*, 81 F.4th at 450-51; *see also, e.g.*, *Perez v. Drs. Hosp. at Renaissance, Ltd.*, 624 F. App'x 180, 184 (5th Cir. 2015) (equating "intent[]" with "purposeful[]" discrimination); *A.N. v. Mart Indep. Sch. Dist.*, No. 13-CV-002, 2013 WL 11762157, at *6 (W.D. Tex. Dec. 23, 2013) ("Under [the Fifth Circuit's] higher standard of review, the plaintiff must link the discrimination claims to some evidence

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[4] The plaintiff in *J.W.* filed a petition for certiorari but did not raise this issue. *See J.W. v. Paley*, 144 S. Ct. 2658 (2024) (No. 23-931).

of prejudice, ill-will, or spite."), *aff'd*, 608 F. App'x 217 (5th Cir. 2015).

And that is what the Fifth Circuit demanded here: Even though prison officers "had seen medical documentation" for Mr. Wingfield's prescribed shoes and "knew that [his] disability limited his mobility creating a medical need for his shoes," the court rejected Mr. Wingfield's claims because he did not produce "evidence that any alleged discrimination was *intended* to discriminate against him *because of* his disability." App. 11a-12a (emphasis in original). In other words, the court focused on the reason *why* the "officers chose to deny him his shoes" and whether that choice was motivated by the fact that he was "disabled" rather than a desire to engage in "indiscriminate, run-of-the-mill bullying." *Id.* at 11a. Thus, "[e]ven assuming" the conduct "amounts to deliberate indifference," the court was "constrained by [its] precedent to deny Wingfield's sought-after relief" of damages. *Id.* at 11a-13a.

C. This Court Should Resolve The Split

The circuit split could hardly be clearer. The Fifth Circuit itself has repeatedly recognized—including in this case—that its heightened standard for intentional discrimination is "[u]nlike" the standard in "other circuits." App. 11a-12a (quoting *Smith*, 956 F.3d at 318). Several decisions from those other circuits have likewise flagged the "circuit split on the level of intent required for damages under the ADA." *Koon*, 50 F.4th at 403-04; *see also, e.g.*, *Liese*, 701 F.3d at 345 (analyzing the circuit split); *S.H.*, 729 F.3d at 262-63 (same); *Lacy*, 897 F.3d at 862 & n.33 (same); *Pierce*, 128 F. Supp. 3d at 278-79 (same).

Commentators too have recognized that the "circuit courts are split as to what level of intent an individual must prove in order to obtain damages under Title II of the ADA and § 504 of the [Rehabilitation Act]." Derek Warden, *The Rehabilitation Act at Fifty*, 14 Cal. L. Rev. Online 54, 62 (2023); *see also, e.g.*, Joshua M. Alpert, *Disability Criminal Procedure: An Exploration of How and Why Disability Law Regulates the Carceral System*, 29 Tex. J. on C.L. & C.R. 219, 270 & n.336 (2024) (noting the split).

This Court's review is necessary to resolve this entrenched conflict. Despite the wave of circuits adopting the deliberate indifference standard over the past two decades, the Fifth Circuit has dug in its heels and refused to revisit its outlier position. Indeed, just two years ago, the Fifth Circuit received a petition for rehearing en banc raising this issue that garnered substantial amicus support. *See* Reh'g Pet. 10-14, *J.W. v. Paley*, No. 21-20671 (5th Cir. Sept. 25, 2023), ECF No. 119 (urging the court to resolve the split by adopting the deliberate indifference standard); Amici Curiae COPAA, et al. Br. 4-11, *J.W.*, *supra* (5th Cir. Oct. 2, 2023), ECF No. 134 (brief of five disability-rights organizations urging the same). The court denied the petition without even calling for a response. *See* Order, *J.W.*, *supra* (5th Cir. Oct. 10, 2023), ECF No. 145. Unless this Court intervenes, ADA plaintiffs in the Fifth Circuit will continue to face a uniquely stringent standard for establishing intent that plaintiffs in no other circuit face.

That difference based on geographical happenstance is intolerable. This Court routinely intervenes to resolve circuit conflicts over legal standards that govern federal laws protecting

individuals with disabilities. *See, e.g.*, *A.J.T.*, 605 U.S. 335; *Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142 (2023); *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017); *Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154 (2017). It should follow that course here. The circuit division over the proper standard for damages undermines Congress's explicit call in the ADA for "clear" and "consistent . . . standards" to govern the "national mandate for the elimination of [disability] discrimination." 42 U.S.C. § 12101(b)(1)-(2). There is thus a "substantial interest" in having a "uniform approach to this question." *Basta*, 56 F.4th at 316.

The difference will also be outcome-determinative for scores of ADA plaintiffs, including Mr. Wingfield. Had his case been filed in any other circuit, it would have been evaluated under the deliberate indifference standard. And as the Fifth Circuit recognized, his allegations—that correctional officers confiscated and withheld his medically prescribed shoes despite knowledge of his disability and need for the shoes—may well "amount[] to deliberate indifference." App. 11a; *see also id.* at 8a (agreeing that the alleged conduct "evinces indifference toward Wingfield needing his shoes for general mobility"). Indeed, as described above, courts in other circuits have held that similar treatment of prisoners with disabilities amounts to deliberate indifference. *See Douglas*, 2022 WL 3088240, at *8-12; *Durham*, 82 F.4th at 226; *Furgess*, 933 F.3d at 292; *McDaniel*, 115 F.4th at 829; *Whitall*, 854 F. App'x at 220.

But because the Fifth Circuit was "constrained by [its] precedent" holding that deliberate indifference is "not enough," it was forced to reject Mr. Wingfield's ADA claims. App. 11a-13a. The Fifth Circuit's outlier

rule was thus decisive in this case and warrants this Court's review.

II. The Fifth Circuit's Rule Is Wrong

Certiorari is also warranted because the Fifth Circuit's outlier rule is wrong. As the majority of circuits have explained, and as the United States has repeatedly argued (including to this Court in *A.J.T.*), deliberate indifference is sufficient to establish intent in the context of damages claims under the Rehabilitation Act and ADA. The Fifth Circuit's requirement of *more* than deliberate indifference is unreasoned and unsound.

1. The Fifth Circuit's rule has no basis in the intent requirement itself. As explained above, that requirement for damages comes from the cross-reference in the ADA's remedies provision, 42 U.S.C. § 12133, to the Rehabilitation Act—a Spending Clause statute that itself cross-references Title VI, another Spending Clause statute. *See supra* at 5-7.[5]

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[5] To be clear, the intent requirement does *not* come from the ADA's substantive prohibition on discrimination in Section 202, 42 U.S.C. § 12132. *See supra* at 5-6 & n.2. All circuits—including the Fifth Circuit—"permit[] plaintiffs to establish a statutory violation" under the ADA "without proving intent to discriminate," such as in paradigmatic reasonable-accommodation claims. *A.J.T.*, 605 U.S. at 344; *see Bennett-Nelson v. Louisiana Bd. of Regents*, 431 F.3d 448, 454-55 (5th Cir. 2005); *see also Alexander v. Choate*, 469 U.S. 287, 297 (1985) (explaining that one of the Rehabilitation Act's "central aims" is the removal of barriers that "were clearly not erected with the aim or intent of excluding the handicapped"). Rather, the intent requirement is a gloss on the remedies authorized in Section 203 due to the cross-reference to Spending Clause legislation. The Fifth Circuit thus treats "intent[]" as a separate, damages-specific requirement on top of establishing "a violation of the ADA" itself. App. 12a (citation omitted).

In the Spending Clause context, the Court has held that "monetary damages are available as a remedy for *intentional* violations" of the statute. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022) (emphasis added).

That intent requirement implements a "'contract-law analogy'" applied to Spending Clause legislation that defines "'the scope of conduct for which funding recipients may be held liable for money damages.'" *Id.* at 219. The "central concern" is ensuring that a funding recipient has "'notice that it will be liable for a monetary award'"—which cannot happen when a recipient is "unaware" of the violation. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998). Thus, while "prospective" equitable relief like an injunction may be available to remedy "unintentional" violations of which the recipient was "unaware," damages liability requires intent. *Id.*; *see Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 74 (1992) ("The point of not permitting monetary damages for an unintentional violation is that the receiving entity of federal funds lacks notice that it will be liable for a monetary award.").

Given the Spending Clause's "central concern" of requiring "notice" before subjecting a funding recipient to damages liability, *Gebser*, 524 U.S. at 287, the proper standard for intent is one grounded in knowledge. A finding of "deliberate indifference"—which means the defendant "disregarded a known or obvious consequence of his action"—easily satisfies that requirement. *Board of the Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 410 (1997). That standard is fully compatible with the common-law understanding of "intent." *See, e.g.*, Restatement (Second) of Torts § 8A (1965) (treating knowledge of

consequences as species of "intent" for primary tort liability).

Consistent with that understanding, this Court has held that "deliberate indifference" amounts to "intentional" discrimination for purposes of Title IX of the Education Amendments of 1972. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005); *see Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 642-43 (1999); *Gebser*, 524 U.S. at 290-91. Title IX is another Spending Clause statute modeled on Title VI that often provides guidance in determining the remedies available under the Rehabilitation Act and the ADA. *See A.J.T.*, 605 U.S. at 344 n.4; *Barnes v. Gorman*, 536 U.S. 181, 185-89 (2002). In the Title IX cases, the Court explained that requiring defendants to have been "deliberately indifferent to known acts of" discrimination addresses the Spending Clause-based notice concerns underlying the intent requirement. *Davis*, 526 U.S. at 642-43.

2. That same understanding of the intent requirement extends to the Rehabilitation Act and the ADA. Indeed, as the Solicitor General told this Court last Term in *A.J.T.*, the "rationales for adopting the deliberate-indifference standard apply with full force to damages claims under [the Rehabilitation Act]" and "the ADA." U.S. Amicus Br. 18, *A.J.T. v. Osseo Area Schs.*, No. 24-249 (Mar. 6, 2025) (*A.J.T.* U.S. Br.).[6]

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[6] The federal government has also repeatedly made this argument in the courts of appeals. *See, e.g.*, U.S. Amicus Br. 6-13, *Basta v. Novant Health Inc.*, No. 21-2375 (4th Cir. Feb. 25, 2022), 2022 WL 620755; U.S. Amicus Br. 25-28, *King v. Marion*

The ADA's intent requirement for damages is therefore satisfied when a defendant disregards a known or obvious disability-based exclusion or need for disability-based accommodation. Such a deliberate indifference standard "ensures that regulated entitles will have notice before they are held liable for damages." *Id.* at 11. That standard therefore satisfies "the notice-and-opportunity requirements of Spending Clause legislation." *Liese*, 701 F.3d at 348.

At the same time, the deliberate indifference standard respects "the ADA's and the Rehabilitation Act's goals of assuring that people with disabilities have equal opportunities and are fully integrated into society." *A.J.T.* U.S. Br. 11. Congress enacted these statutes to target disability discrimination that was "most often the product, not of invidious animus, but rather of thoughtlessness and indifference." *A.J.T.*, 605 U.S. at 358 (Sotomayor, J., concurring) (quoting *Alexander v. Choate*, 469 U.S. 287, 295 (1985)). That is why the statutory text "contains no reference to improper purpose" or animus and instead simply requires "a causal link between the individual's disability and her 'exclu[sion] from' participating in or receiving the benefits of a covered service, program, or activity." *Id.* at 356 (alteration in original); *see supra* at 6 n.2.

Requiring plaintiffs seeking damages to demonstrate something more than deliberate indifference—such as discriminatory motive or animus—insulates large swaths of disability discrimination that Congress sought to address.

Cnty. Cir. Ct., No. 16-3726 (7th Cir. Feb. 17, 2017), 2017 WL 710699.

Thus, the "deliberate indifference standard," rather than the "higher standard" imposed by the Fifth Circuit, addresses the Spending Clause notice concern without unduly narrowing the statute's scope. *S.H.*, 729 F.3d at 264-65 (quoting *Liese*, 701 F.3d at 348).

3. The Fifth Circuit has never meaningfully justified its heightened intent standard. Instead, the court has relied on its 2002 decision in *Delano-Pyle*, which stated that "[t]here is no 'deliberate indifference' standard applicable to public entities for purposes of the ADA or the [Rehabilitation Act]." 302 F.3d at 575; *see J.W.*, 81 F.4th at 450; *Smith*, 956 F.3d at 318; *Miraglia v. Board of Supervisors of the La. State Museum*, 901 F.3d 565, 575 (5th Cir. 2018).

The Fifth Circuit offered no analysis to support *Delano-Pyle*'s conclusory assertion; the court seemed to simply assume that deliberate indifference is different from (rather than a standard for establishing) "intentional discrimination." 302 F.3d at 575. That assumption is wrong: This Court has recognized that "deliberate indifference" is a "form" of "intentional" conduct. *Jackson*, 544 U.S. at 173. And yet, even in the face of reasoned decisions from other circuits directly rejecting *Delano-Pyle*'s assertion, the Fifth Circuit has clung to it as precedent requiring "something more than 'deliberate indifference' to show intent." *Miraglia*, 901 F.3d at 575 (citing *Delano-Pyle*, 302 F.3d at 575).

The Fifth Circuit's rule is also unsound. For more than two decades, the court has been unable to "'delineate[] the precise contours'" of what its "'something more'" standard actually requires. *J.W.*, 81 F.4th at 449-50. That is hardly surprising—without a reasoned "legal authority on which to

ground [its] analysis," the court has "no principled way to resolve doctrinal ambiguities." *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 315 (2025) (Thomas, J., concurring).

In some cases, the Fifth Circuit has filled the gap by looking for "'discriminatory motive'" or "animus." *J.W.*, 81 F.4th at 450-51; *see also, e.g.*, *Perez*, 624 F. App'x at 184 (requiring "purposeful[]" discrimination). That is also unsurprising—as other courts have recognized, discriminatory animus is the only real alternative to deliberate indifference in this context. *See S.H.*, 729 F.3d at 262-63. Thus, as a practical matter, the Fifth Circuit's rule requires precisely what the ADA and Rehabilitation Act are designed to avoid—a showing of "invidious animus"—and thus excludes "much of the conduct" that Congress sought to address. *Choate*, 469 U.S. at 295-97.

This case exemplifies the problem. Applying its heightened standard, the Fifth Circuit rejected Mr. Wingfield's claims because the challenged conduct—inhibiting an amputee's access to basic prison services by knowingly withholding his medically necessary footwear—was not motivated by an "*intent* to discriminate" against Mr. Wingfield "*because of* his disability," but was instead motivated by "indiscriminate, run-of-the-mill bullying." App. 11a-13a.

That motive-based distinction has no basis in the Spending Clause precedent underlying the intent requirement. And it is directly at odds with the ADA's core purpose of eliminating disability discrimination that "derives principally from 'apathetic attitudes rather than affirmative animus.'" *A.J.T.*, 605 U.S. at 359 (Sotomayor, J., concurring) (quoting *Choate*, 469

U.S. at 296). Indeed, by dismissing blatant ADA violations as "run-of-the-mill bullying" that lacks the requisite "intent," App. 11a-13a (emphasis omitted), the Fifth Circuit's heightened standard precludes meaningful relief for conduct that falls within the ADA's heartland. And until this Court intervenes, ADA violations will only continue to be "run-of-the-mill" behavior in that circuit. The Fifth Circuit's erroneous view of the law demands immediate correction by this Court.

III. The Question Presented Is Exceptionally Important And Merits Review In This Case

1. The proper standard for establishing intentional discrimination under the ADA is an issue of exceptional and recurring importance.

The ADA is a foundational civil rights statute, protecting more than 44 million Americans with disabilities.[7] It is designed to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1)-(2). Title II broadly extends that mandate to the "services, programs, [and] activities" of "public entit[ies]," 42 U.S.C. § 12132, and thus provides a crucial safeguard against disability discrimination in several areas of everyday life—including public schools and universities, prisons and jails, transportation, healthcare facilities, courts, and parks, among many others. And the remedies available under the ADA track the remedies available under the Rehabilitation

[7] *See* Press Release, U.S. Census Bureau, *Anniversary of Americans With Disabilities Act: July 26, 2025* (June 24, 2025), https://perma.cc/ATS6-GHB3.

Act—another crucial civil rights statute designed to "assure evenhanded treatment" and curb disability discrimination within "programs receiving [federal] federal assistance." *Choate*, 469 U.S. at 304.

Identifying "the correct legal standard" governing claims "under [these] two widely utilized federal statutes is an issue of national importance." *A.J.T.*, 605 U.S. at 355 (Thomas, J., concurring). The test for obtaining compensatory damages is a basic component of the ADA and Rehabilitation Act causes of action, present in virtually every case raising such claims. Accordingly, several members of this Court expressed interest in this standard during the argument in *A.J.T.*, where it was not squarely raised for decision. *See* Oral Arg. Tr. 9-13, 17-18, 27-28, 31, 37-38, 41, 68-70, 93-94, *A.J.T.*, *supra* (Apr. 28, 2025) (multiple Justices asking about the "deliberate indifference" standard).

Resolving this question is especially important for individuals with disabilities who reside in the Fifth Circuit. The Fifth Circuit is home to some five million people with disabilities.[8] And yet, unlike the rest of the country, those individuals face a uniquely onerous challenge in seeking damages for disability discrimination. A quick Westlaw search reveals dozens of cases applying the Fifth Circuit's

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[8] *See* U.S. Census Bureau, *American Community Survey, 2023: ACS 1-Year Estimates Subject Tables, Table S1810: Disability Characteristics* (last accessed Aug. 12, 2025), https://tinyurl.com/Census-Disability-CA5.

"something more than deliberate indifference" standard in a variety of contexts.[9]

As courts in the Fifth Circuit continue to reject ADA claims for failure to satisfy that standard, that will only deter future victims of discrimination from bringing suit for conduct that, in any other circuit, may well be compensable. The Fifth Circuit's entrenched departure from all other circuits demands this Court's review. *Cf., e.g.*, *Coney Island Auto Parts Unlimited, Inc. v. Burton*, No. 24-808 (cert. granted June 6, 2025) (granting certiorari to resolve 11-1 split); *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45, 49 (2025) (resolving 6-1 split over proper legal standard).

2. This case is an ideal vehicle for resolving these issues. The question is cleanly presented and outcome-determinative here. The Fifth Circuit assumed that Mr. Wingfield's allegations amount to deliberate indifference, App. 11a, which would have sufficed to survive dismissal in any other circuit. *See supra* at 22-24. The outcome here thus turned entirely on the Fifth Circuit's rule that "deliberate

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[9] For a representative sample of cases in addition to the cases already cited, *see, e.g.*, *R.W. ex rel. Max W. v. Clear Creek Indep. Sch. Dist.*, No. 24-40141, 2025 WL 801360, at *4 (5th Cir. Mar. 13, 2025); *Madron v. Massey*, No. 22-CV-00031, 2024 WL 4125382, at *12 (N.D. Tex. Aug. 5, 2024), *report and recommendation adopted*, 2024 WL 4127575 (N.D. Tex. Sept. 9, 2024); *Connors v. Hulipas*, No. 17-CV-1512, 2020 WL 12632013, at *8-9 (S.D. Tex. Feb. 7, 2020), *aff'd*, No. 21-20598, 2022 WL 17851688 (5th Cir. Dec. 22, 2022); *Alba-Cruz v. Ard*, No. 17-CV-62, 2018 WL 6438361, at *19 (M.D. La. Dec. 7, 2018); *see also Garza v. City of Donna*, No. 16-CV-00558, 2017 WL 2861456, at *7 (S.D. Tex. July 5, 2017) (equating "intentional discrimination" with "ill will or animus").

indifference" is "not enough" to demonstrate intent. App. 11a.

This case also tees up the question at the pleading stage. As a result, the Court will not need to wade through any fact-bound issues to resolve it; the Court can simply take the allegations identified in the Fifth Circuit's opinion as given. The sole question for the Court is the purely legal question whether the deliberate indifference standard adopted by the majority of circuits is the correct standard for damages liability under the ADA. Because that question has divided the circuits and is nationally important, this Court should finally resolve it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 19, 2025

APPENDIX

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[2025 WL 1040649]

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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

Filed: April 8, 2025

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,

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

appeals the dismissal of his suit brought pursuant to 42 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.

* * *

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

[2023 WL 5835941]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

ANTHONY B. WINGFIELD, #1896078, Plaintiff,	§	
v.	§	Case No.. 6:21-cv-320-JDK-KNM
UNKNOWN GARNER, et al., Defendants.	§	

ORDER ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Anthony B. Wingfield, a Texas Department of Criminal Justice inmate proceeding pro se, brings this civil rights lawsuit under 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. Before the Court is Defendants Clinton Ellis, Joi Garner, Susan Cunningham, and Sarah Mershon's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Docket No. 31.

On August 8, 2023, Judge Mitchell issued a Report and Recommendation recommending that the Court grant Defendants' motion to dismiss and dismiss

Plaintiff's claims under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Docket No. 34. Specifically, the Magistrate Judge found that Plaintiff failed to provide facts allowing an inference that any named Defendant knew of and then disregarded a substantial risk of serious harm to him resulting from the confiscation of his shoes. *See Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006). She also determined that Plaintiff failed to state a claim under the Americans with Disabilities Act (ADA) because, in part, Plaintiff failed to allege any facts from which a reasonable factfinder could conclude that any alleged discrimination was intentional. *See Foley v. City of Lafayette*, 359 F.3d 925, 930–31 (7th Cir. 2004). A copy of this Report was sent to Plaintiff, and Plaintiff filed timely objections. Docket No. 35.

Where a party timely objects to the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

The Court overrules Plaintiff's objections. The objections fail to address the legal substance of the Magistrate Judge's Report, and they do not identify any specific errors. Instead, Plaintiff reargues his claims and notes that the record is "clear."

Having conducted a de novo review of the record in this case and the Magistrate Judge's Report, the Court has determined that the Report of the Magistrate Judge is correct, and Plaintiff's objections

are without merit. Accordingly, the Court hereby **ADOPTS** the Report of the Magistrate Judge (Docket No. 34) as the opinion of the District Court and **GRANTS** Defendants' motion to dismiss (Docket No. 31). Plaintiff's claims are **DISMISSED** with prejudice for lack of jurisdiction and failure to state a claim upon which relief can be granted.

So **ORDERED** and **SIGNED** this **7th** day of **September, 2023.**

/s/ *Jeremy D. Kernodle*
JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE

[2023 WL 5839585]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ANTHONY BERNARD WINGFIELD	§	
	§	
	§	
VS.	§	CIVIL ACTION
	§	NO. 6:21cv320
UNKNOWN GARNER, et al.	§	

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Anthony Bernard Wingfield, an inmate of the Texas Department of Criminal Justice (TDCJ), proceeding *pro se* and *in forma pauperis*, filed this complaint under 42 U.S.C. § 1983 complaining of alleged violations of his constitutional rights in the TDCJ's Michael Unit. The lawsuit was referred to the undersigned United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case. The operative complaint is Plaintiff's Second Amended Complaint (SAC), filed September 21, 2022. (Dkt. #30.)

Defendants Ellis, Garner, Cunningham, and Mershon have moved to dismiss for lack of jurisdiction and failure to state a claim upon which relief can be granted. (Dkt. #31.) Plaintiff has not responded to that motion. For reasons explained below, the undersigned recommends that the motion

be granted. The undersigned further recommends that Plaintiff's remaining claims be dismissed sua sponte and that Plaintiff's lawsuit be dismissed with prejudice in its entirety.

I. Plaintiff's Pleadings

After filing one amended complaint and several further efforts on Plaintiff's part to supplement his complaint, the Court ordered Plaintiff to file a second "amended complaint—in a single document—that will act as the operative pleading in this lawsuit." (Dkt. #28 at 1.) The Court reiterated in its order that "[t]his amended complaint will act as the operative pleading in this case, and no further amendments will be permitted absent a showing of exceptionally good cause." (*Id.*) An amended complaint entirely supersedes and takes the place of an original complaint. *Clark v. Tarrant Cnty., Tex.*, 798 F.2d 736, 740 (5th Cir. 1986).

The entire statement of claim in the SAC Plaintiff filed in response to that order provides as follows:

> 1st Sgt. Garner took shoes, forced to walk barefoot no confiscation papers (dates, times etc, original steps 1&2 grievances) Sgt. Ellis refused to intervene even after seeing plaintiff is a b/k amputee and shoes were serious medical need. After getting shoes back Sgt. Cunningham 7/3/21 reconfiscated shoes even after seeing medical paper-work (shoes again returned) C.O. Marshon denied plaintiff brace & limb clinic to alter new prosthesis due sole[l]y to plaintiff being unable to wear shower slides, policy change (I.O.C.) allowing shoes issued next morning. Plaintiff forced to suffer 38 more

> days till next brace & limb clinic. All step 1s &2s submitted to court previously.

(Dkt. #30 at 4.)

As Defendants, Plaintiff names Sgt. Unknown Ellis, Sgt. Unknown Garner, Sgt. Cunningham, C.O. Marshon, and "any other TDCJ official/employee responsible for discriminatory / denial of serious medical needs." (*Id.* at 3.) He seeks unspecified compensation for pain and suffering as well as violations of the Americans with Disabilities Act (ADA). (*Id.* at 4.)

II. Defendants' Motions to Dismiss

Defendants move to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure. (Dkt. ##21, 29.) First, they assert that any claims against Defendants in their official capacities should be dismissed for lack of jurisdiction under Rule 12(b)(1) because such claims are broadly barred by sovereign and Eleventh Amendment immunity. (Dkt. #31 at 3–4.)

Defendants also argue under Rule 12(b)(6) that Plaintiff fails to state a claim for which relief can be granted. Specifically, they assert that Plaintiff has failed to allege any facts demonstrating the personal involvement of Defendant Ellis required to make her liable under Section 1983 as a supervisor and that he apparently seeks to hold her responsible solely due to her position of authority over Defendant Garner. (*Id.* at 5–6.)

Defendants further argue that Plaintiff fails to state a claim for deliberate indifference or violation of the ADA against any other Defendant. They say Plaintiff has not alleged facts that would demonstrate that Defendants Garner or Cunningham actually knew of a substantial risk of serious harm to Plaintiff

that would result from confiscating his shoes. (*Id.* at 9.) At most, they say, Plaintiff alleges knowledge that he had a prosthetic limb, but that does not establish that Garner or Cunningham knew that the shoes were medically necessary. (*Id.* at 10.) And the delay in returning the shoes, like a brief delay in providing ordinary medical care, does not rise to the level of a constitutional violation. (*Id.*) Defendants assert that even if these facts are found to constitute a violation, their actions were objectively reasonable and not in violation of clearly established law, entitling them to qualified immunity. (*Id.* at 10–11.)

Defendants argue that Plaintiff's allegations also do not establish deliberate indifference on the part of Defendant Mershon. (Dkt. #31 at 11–12.) They say Plaintiff has not alleged facts that would establish that Mershon was subjectively aware that enforcing the shower shoe requirement for transport posed a substantial risk of serious harm to plaintiff or that he disregarded such a risk. (*Id.* at 11.) Further, the resulting 38-day delay in Plaintiff's attending the clinic is not sufficient to violate the Eighth Amendment. (*Id.* at 12.) And finally, Mershon, too, asserts that even if these facts are found to constitute a violation, her action were objectively reasonable, and she is entitled to qualified immunity. (*Id.*)

Likewise, Defendants assert that Plaintiff fails to state a claim for an ADA violation. (Dkt. #31 at 13–14.) They say that Plaintiff cannot show that he is being denied a reasonable accommodation to access services where his shoes were returned after his ownership was verified, and he only experienced a 38-day delay in attending his clinic appointment. (*Id.* at 14.) Further, they say Plaintiff does not allege facts establishing that he has been discriminated against

because of his disability, because both of the actions he complains about were taken for reasons unrelated to his disability and were later rectified to provide what Plaintiff needed. (*Id.*)

Finally, Defendants assert that Plaintiff's allegations that Defendants violated TDCJ policy do not establish a violation of his constitutional or federal rights. (Dkt. #31 at 14–15.)

III. Legal Standards

Motions filed under Rule 12(b)(1) of the Federal Rules of Civil Procedure allow a party to challenge the subject matter jurisdiction of the district court to hear a case. Fed. R. Civ. P. 12(b)(1). The Rules require the court to dismiss a case for lack of subject matter jurisdiction "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). "Sovereign immunity is jurisdictional in nature." *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). Claims barred by the invocation of sovereign immunity "can be dismissed only under Rule 12(b)(1)." *Warnock v. Pecos Cnty.*, 88 F.3d 341, 343 (5th Cir. 1996).

In analyzing a motion to dismiss under Rule 12(b)(1), a court may consider (1) the complaint alone; (2) the complaint supplemented by undisputed facts or evidence in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. *McDaniel v. United States*, 899 F. Supp. 305, 307 (E.D. Tex. 1995); *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511

(5th Cir. 1980). When the defendant alleges a facial attack under Rule 12(b)(1), "the trial court is required merely to look to the sufficiency of the allegations in the complaint because they are presumed to be true." *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981).

The Fifth Circuit has observed that motions to dismiss under Rule 12(b)(6) are "viewed with disfavor and rarely granted." *See Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011). Such motions are generally evaluated on the pleadings alone. *See Jackson v. Procunier*, 789 F.2d 307, 309 (5th Cir. 1986).

Nevertheless, Federal Rule of Civil Procedure 12(b)(6) permits dismissal if a plaintiff "fails to state a claim upon which relief may be granted." A complaint fails to state a claim upon which relief may be granted where it does not allege sufficient facts which, taken as true, state a claim which is plausible on its face and thus does not raise a right to relief above the speculative level. *See Montoya v. FedEx Ground Packaging Sys. Inc.*, 614 F.3d 145, 149 (5th Cir. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A claim has factual plausibility when the pleaded factual content allows the court to draw reasonable inferences that the defendant is liable for the misconduct alleged. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Hershey v. Energy Transfer Partners, L.P.*, 610 F.3d 239, 245 (5th Cir. 2010). This plausibility standard is not akin to a probability standard; rather, the plausibility standard requires *more than the mere possibility* that the defendant has acted unlawfully. *Twombly*, 550 U.S. at 556 (emphasis supplied).

Although all well-pleaded facts are taken as true, the district court need not accept as true conclusory

allegations, unwarranted factual inferences, or legal conclusions. *See Whatley v. Coffin*, 496 F. App'x 414, 2012 WL 5419531 (5th Cir. Nov. 7, 2012) (citing *Plotkin v. IP Axess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005)). Crucially, while the federal pleading rules do not require "detailed factual allegations," the rule does "demand more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. A pleading offering "labels and conclusions" or a "formulaic recitation of the elements of a cause of action" will not suffice, nor does a complaint which provides only naked assertions that are devoid of further factual enhancement. *Id. Pro se* plaintiffs are held to a more lenient standard than are lawyers when analyzing a complaint, but *pro se* plaintiffs must still plead factual allegations that raise the right to relief above the speculative level. *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016).

IV. Discussion and Analysis

A. Official Capacity Claims

Ordinarily, "[w]hen 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." *Ramming*, 281 F.3d at 161. Here, the Defendants have moved that the claims against them in their official capacities be dismissed for lack of jurisdiction.

The Eleventh Amendment bars a suit in federal court against a state unless the sovereign has unequivocally expressed a waiver of its immunity. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984). Furthermore, because state officials assume the identity of the government that

employs them, state officials sued in their official capacity are not liable for damages under section 1983. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991). Accordingly, any claim for damages against any Defendant in this case in his or her official capacity must be dismissed.

The *Ex Parte Young* doctrine "represents an equitable exception to Eleventh Amendment sovereign immunity," through which plaintiffs may seek injunctive relief to enforce federal law against a state official in his official capacity. *Air Evac EMS, Inc. v. Texas, Dep't of Ins., Div. of Workers' Comp.*, 851 F.3d 507, 515 (5th Cir. 2017) (discussing *Ex parte Young*, 209 U.S. 123 (1908)). But in this case, Plaintiff does not seek any injunctive relief, and any such demand would be invalid because he does not allege any ongoing violation:

> "In order to demonstrate that a case or controversy exists to meet the Article III standing requirement when a plaintiff is seeking injunctive or declaratory relief, a plaintiff must allege facts from which it appears there is a substantial likelihood that he will suffer injury in the future." *Bauer v. Texas*, 341 F.3d 352, 358 (5th Cir. 2003). "To obtain [declaratory] relief for past wrongs, a plaintiff must demonstrate either continuing harm or a real and immediate threat of repeated injury in the future." *Id.*

Waller v. Hanlon, 922 F.3d 590, 603 (5th Cir. 2019) (dismissing claim for declaratory judgment and allowing excessive-force claim to proceed). Accordingly, Plaintiff's official-capacity claims

against all Defendants for any violation of his constitutional rights must be dismissed.

B. Individual Capacity Claims

1. Deliberate indifference

The Court considers Plaintiff's constitutional claims under the Eighth Amendment and its prohibition against cruel and unusual punishment, which prohibits the unnecessary and wanton infliction of pain. *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). The Eighth Amendment mandates that prisoners be afforded humane conditions of confinement and that they receive adequate food, shelter, clothing, and medical care. *Herman*, 238 F.3d at 664; *see also Harper v. Showers*, 174 F.3d 716, 719 (5th Cir. 1999) (recognizing that "[t]he Constitution does not mandate comfortable prisons . . . but neither does it permit inhumane ones").

An Eighth Amendment violation occurs in prison only when two requirements are met. First, there is the objective requirement that the aggrieving condition "must be so serious as to 'deprive prisoners of the minimal civilized measure of life's necessities,' as when it denies the prisoner some basic human need." *Harris v. Angelina Cnty., Tex.*, 31 F.3d 331, 334 (5th Cir. 1994) (citing *Wilson v. Seiter*, 501 U.S. at 304). Second, under a subjective standard, the Court must determine that the prison officials responsible for the deprivation have been "deliberately indifferent to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

In applying this standard, the determinative question is whether a defendant prison official subjectively knew that an inmate faced a substantial

risk of serious harm yet disregarded that risk by failing to take reasonable steps to abate it. *Id.* To be deliberately indifferent, a prison official must have personally been aware of facts from which an inference could be drawn that a substantial risk of serious harm existed, and the official must also be found to have drawn the inference. *Id.* Conclusory allegations are not sufficient to satisfy this standard; a plaintiff must allege facts to support what are otherwise broad and conclusory allegations of wrongdoing. *See Rougley v. GEO Group*, 2011 WL 7796488, at *3 (W.D. La. Nov. 7, 2011).

The Fifth Circuit has discussed the "high standard" involved in demonstrating deliberate indifference as follows:

> Deliberate indifference is an extremely high standard to meet. It is indisputable that an incorrect diagnosis by medical personnel does not suffice to state a claim for deliberate indifference. *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985). Rather, the plaintiff must show that the 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." *Id.* Furthermore, the decision whether to provide additional treatment "is a classic example of a matter for medical judgment." *Estelle*, 429 U.S. at 107. And, the "failure to alleviate a significant risk that [the official] should have perceived, but did not" is insufficient to show deliberate indifference. *Farmer*, 511 U.S. at 838.

Domino v. Texas Dep't of Criminal Justice, 239 F.3d 752, 756 (5th Cir. 2001). In the medical care context, "[u]nsuccessful medical treatment, acts of negligence, or medical malpractice do not constitute deliberate indifference, nor does an inmate's disagreement with his medical treatment, absent exceptional circumstances." *Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006). Even defendants "who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted." *Farmer*, 511 U.S. at 844. In sum, in order to show deliberate indifference, the prisoner must show (1) objective exposure to a substantial risk of serious harm, (2) the defendants had subjective knowledge of this substantial risk, (3) the defendants denied or delayed the prisoner's medical treatment despite their knowledge of this substantial risk, and (4) this denial of or delay in treatment resulted in substantial harm. *Petzold v. Rostollan*, 946 F.3d 242, 249 (5th Cir. 2019).

Moreover, to be personally liable under Section 1983, an individual defendant "must have been personally involved in the alleged constitutional deprivation or have engaged in wrongful conduct that is causally connected to the constitutional violation." *Turner v. Lieutenant Driver*, 848 F.3d 678, 695–96 (5th Cir. 2017). Accordingly, supervisors are not liable under a *respondeat superior* theory for the conduct of their subordinates under Section 1983, but are only liable for their own unconstitutional actions and omissions. *Iqbal*, 556 U.S. at 676 (government officials not liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*); *Carnaby v. City of Houston*, 636 F.3d 183,

189 (5th Cir. 2011) (rejecting claim that defendant was liable for failure to supervise other officers because "[u]nder § 1983 . . . a government official can be held liable only for his own misconduct"). "Liability under § 1983 for a supervisor may exist based either on 'personal involvement in the constitutional deprivation,' or 'a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation.' " *Martinez v. Maverick Cty.*, 507 F. App'x 446, 448 (5th Cir. 2013) (quoting *Thompkins v. Belt*, 828 F.2d 298, 304 n.2 (5th Cir. 1987)).

Plaintiff's allegations do not rise to this level. His allegation that Defendant Ellis, as a supervisor, "refused to intervene" in his subordinates' actions is not sufficient to make Ellis personally liable in any alleged violation. Moreover, the alleged violations themselves simply do not amount to cruel and unusual punishment. His special shoes were twice confiscated when they should not have been, and he acknowledges that both times the shoes were returned. He does not allege any facts from which a jury could find that losing his shoes created a substantial risk of serious harm to him or that the Defendants who took his shoes were subjectively aware of that risk. And even if the shoe confiscations were negligent on Defendants' part, negligence does not amount to a constitutional violation. *Norton v. Dimazana*, 122 F.3d 286, 291 (5th Cir. 1997); *Gobert*, 463 F.3d at 346.

Nor does Plaintiff allege that he actually suffered any physical injury from the temporary deprivation of his shoes or the delay in being able to attend the limb clinic. *See* 42 U.S.C. § 1997e(e) ("No Federal civil action may be brought by a prisoner confined in a jail,

prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act[.]") Accordingly, Defendants are correct that Plaintiff has failed to establish a violation of his right to be free from deliberate indifference to his serious needs under the Eighth Amendment.

2. Americans with Disabilities Act

Title II of the ADA prohibits "disability discrimination in the provision of public services." *Frame v. City of Arlington*, 657 F.3d 215, 223 (5th Cir. 2011). Specifically, Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. § 12132.

"Title II [of the ADA] imposes an obligation on public entities to make reasonable accommodations or modifications for disabled persons, including prisoners." *Garrett v. Thaler*, 560 F. App'x 375, 382 (5th Cir. 2014) (*per curiam*) (quoting *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) and *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 213 (1998)); *see also Cadena v. El Paso County*, 946 F.3d 717, 723 (5th Cir. 2020). "[A] public entity's failure reasonably to accommodate the known limitations of persons with disabilities can also constitute disability discrimination under Title II." *Windham v. Harris County, Texas*, 875 F.3d 229, 235 (5th Cir. 2017) (citations omitted).

"To succeed on a failure-to-accommodate claim, a plaintiff must prove: (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." *Ball v. LeBlanc*, 792 F.3d 584, 596 n.9 (5th Cir. 2015) (citation omitted). The ADA defines "disability" to mean: "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment . . . ." 42 U.S.C.A. § 12102(1).

To recover monetary damages based on a failure to accommodate, a plaintiff must also prove intentional discrimination. *See Smith v. Harris County, Texas*, 956 F.3d 311, 318 (5th Cir. 2020) (citing *Delano-Pyle v. Victoria County, Texas*, 302 F.3d 567, 574 (5th Cir. 2002)). In the context of a failure-to-accommodate claim, intentional discrimination requires actual knowledge that an accommodation is necessary. *See Cadena*, 946 F.3d at 724 ("[T]his court has affirmed a finding of intentional discrimination when a county deputy knew that a hearing-impaired suspect could not understand him, rendering his chosen method of communication ineffective, and the deputy made no attempt to adapt."). If a defendant has attempted to accommodate a plaintiff's disability, then intentional discrimination requires knowledge "that further accommodation was necessary." *Id.* at 726.

The Fifth Circuit has clarified that intentional discrimination in this context requires a showing of "something more than 'deliberate indifference.' " *Id.* at 724. Deliberate indifference is already an "extremely high" standard to meet. *Domino v. Texas Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001). To demonstrate deliberate indifference a

prisoner must show that the defendant knew of but disregarded an excessive risk to inmate health or safety. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The defendant "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.* For example, to prevail on a claim of deliberate indifference where serious medical needs are concerned the prisoner must "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." *Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006) (internal quotation marks and citation omitted).

Plaintiff does not come close to meeting this standard. Even assuming that the short-term deprivation of his medical shoes or the delay in getting him to the limb clinic could constitute any discrimination or failure to accommodate under the ADA, he does not allege any facts from which a reasonable fact-finder could conclude that the discrimination was intentional. At worst, Plaintiff might establish that Defendants were negligent in their handling of his shoes and his transport to the limb clinic, but "[i]solated acts of negligence by a city employee do not come within the ambit of discrimination against disabled persons proscribed by the ADA." *Bracken v. G6 Hosp. LLC*, No. 4:14-CV-644-ALM-CAN, 2016 WL 3946791, at *7 (E.D. Tex. June 3, 2016), *report and recommendation adopted*, No. 4:14-CV-644, 2016 WL 3917701 (E.D. Tex. July 20, 2016) (quoting *Foley v. City of Lafayette, Ind.*, 359

F.3d 925, 930-31 (7th Cir. 2004)). Plaintiff thus fails to state a claim for violation of the ADA.

Moreover, Defendants are correct that the purported failure of TDCJ officials to follow their own regulations, policies, and procedures is not sufficient, in the absence of any other violation, to state any civil rights claim. *See Myers v. Klevenhagen*, 97 F.3d 91, 94 (5th Cir. 1996) ("Our case law is clear, however, that a prison official's failure to follow the prison's own policies, procedures or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met."); *see also Hernandez v. Estelle*, 788 F.2d 1154, 1158 (5th Cir. 1986) ("The claim is that the mere failure of the TDCJ official to follow their own regulations was a constitutional violation. There is no such controlling constitutional principle.").

3. Qualified immunity

Alternatively, the Defendants have invoked the defense of qualified immunity. In order to overcome qualified immunity, a plaintiff must allege facts showing that the government official violated a plaintiff's right and that the right was clearly established at the time of the challenged conduct. *Laviage v. Fite*, 47 F.4th 402, 405 (5th Cir. 2022). The Fifth Circuit has explained as follows:

> Qualified immunity shields government officials from civil liability in their individual capacity so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.' *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). It protects 'all but the plainly

> incompetent or those who knowingly violate the law.' *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).
>
> Our qualified immunity inquiry is two-pronged. *Garcia v. Blevins*, 957 F.3d 596, 600 (5th Cir. 2020). First, we ask whether the facts, viewed in the light most favorable to the party asserting the injury, show that the official's conduct violated a constitutional right. Second, we ask whether the right was 'clearly established.' *Id.* We can analyze the prongs in either order or resolve the case on a single prong. *Id.*

Cunningham v. Castloo, 983 F.3d 185, 190–91 (5th Cir. 2020).

After explaining that a right is "clearly established" only if it is sufficiently clear that every reasonable official would have understood that the defendant's conduct violated that right, and that there must be adequate authority at a sufficiently high level of specificity to put a reasonable official on notice that the conduct is definitively unlawful, the Fifth Circuit went on to state:

> When an official raises qualified immunity on summary judgment, as Sheriff Castloo did here, the plaintiff bears the burden of showing that the defense does not apply. *See Bryant v. Gillem*, 965 F.3d 387, 391 (5th Cir. 2020). To meet that burden, the plaintiff must present evidence, viewed in her [i.e. the plaintiff's] favor, satisfying both qualified immunity prongs by showing that the defendant (1) violated a constitutional right (2) that was clearly

> established at the time of the defendant's conduct. *See id.*

Cunningham, 983 F.3d at 191; *see also Byrd v. Harrell*, 48 F.4th 343, 346 (5th Cir. 2022) ("When a government official has asserted qualified immunity, 'the burden shifts to the plaintiff to 'rebut the defense by establishing that the official's allegedly wrongful conduct violated clearly established law and that genuine issues of material fact exist regarding the reasonableness of the official's conduct.' ' " (Citation omitted)). Conclusory allegations are insufficient to overcome the qualified immunity defense. *Williams-Boldware v. Denton County, Texas*, 741 F.3d 635, 643–44 (5th Cir. 2014).

While there is no doubt that in general terms, the right to be free from deliberate indifference to serious medical needs or ADA violations was established at the time of the events alleged in this case, Plaintiff does not allege facts that clearly establish a violation of those rights in this case, nor that any reasonable officer in Defendants' position would have known that their conduct was unlawful. In response to Defendants' assertion of qualified immunity, Plaintiff has not come forward with any case law establishing otherwise. The Defendants would thus be entitled to qualified immunity from suit even if the facts could be construed to amount to a constitutional or statutory violation.

V. Conclusion

For the reasons explained above, Plaintiff fails to state a viable claim for any type of relief with respect to any of his allegations, and the moving Defendants are entitled to dismissal under Fed. R. Civ. P. 12(b)(1) and (6). Because the Plaintiff omits any reference to

any other Defendant in his SAC, he fails to state any claim against them, and any claims against non-moving parties should also be dismissed in full. 28 U.S.C. § 1915(e)(2).

RECOMMENDATION

Accordingly, the undersigned recommends that Defendants' motion to dismiss (Dkt. #31) be **GRANTED** and that this action be **DISMISSED** pursuant to Rule 12(b)(1) and (6) for lack of jurisdiction and failure to state a claim for which relief can be granted.

Within fourteen (14) days after receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in the Report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

So ORDERED and SIGNED this 8th day of August, 2023.

/s/ *K. Nicole Mitchell*
K. NICOLE MITCHELL
UNITED STATES
MAGISTRATE JUDGE

29 U.S.C. § 794

§ 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

* * *

29 U.S.C. § 794a

§ 794a. Remedies and attorney fees

(a) * * *

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e–5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

* * *

42 U.S.C. § 12101

§ 12101. Findings and purpose

(a) Findings

The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers,

overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. § 12131

§ 12131. Definitions

As used in this subchapter:

(1) Public entity

The term "public entity" means—

* * *

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; * * *

42 U.S.C. § 12132

§ 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12133

§ 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.