No. 16-6411

United States Court of Appeals

FOR THE FOURTH CIRCUIT

GREGORY CARTER,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of West Virginia

BRIEF OF APPELLANT

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December 12, 2016

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STATEMENT OF JURISDICTION

Mr. Carter appeals the final order and judgment of the United States District Court for the Southern District of West Virginia dismissing his claims brought under the Federal Tort Claims Act (FTCA) for lack of subject matter jurisdiction. JA 007-12, 212-20, 222, 224-28. The district court's Memorandum Opinion and Order was entered on March 2, 2016, JA 220, and the Judgment was entered on March 8, 2016, JA 222. The district court had jurisdiction over Mr. Carter's FTCA claims because the FTCA grants the United States district courts "exclusive jurisdiction" over claims brought under the FTCA. 28 U.S.C. § 1346(b). Mr. Carter filed a timely notice of appeal on March 17, 2016. JA 224-28. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

I. Did the district court err in concluding that Mr. Carter suffered only *de minimis* physical injuries when he suffered chronic ankle injuries and neck pain that severely hampered his mobility and required numerous medical visits, a steroidal injection, an MRI, and potential surgery?

II. Does the Federal Tort Claims Act, 28 U.S.C. § 1346(b)(2), require Mr. Carter to show more than *de minimis* "physical injury" to recover damages for mental or emotional injury where, by its plain meaning, no such threshold exist?

III. Does the Federal Tort Claims Act, 28 U.S.C § 1346(b)(1), provide jurisdiction over claims alleging less than *de minimis* injury, as multiple circuits have held?

STATEMENT OF THE CASE

This is an appeal from an order granting a motion to dismiss for lack of subject matter jurisdiction. Because the government does not challenge the accuracy of Mr. Carter's factual allegations, JA 014-15, Mr. Carter "is afforded the same procedural protection as he would receive under a Rule 12(b)(6) consideration," and this Court should "assume the truthfulness of the facts alleged." *See, e.g.*, *Durden v. United States*, 736 F.3d 296, 300 (4th Cir. 2013) (quoting *Kerns v. United States*, 585 F.3d 187, 192, 193 (4th Cir. 2009)).

Facts

Gregory Carter, a 53-year-old man, arrived at Federal Correctional Institution, Beckley (FCI Beckley) on December 13, 2013. JA 017, 159. On December 30, 2013, Nurse Practitioner James Ellis took his medical history, and Dr. Dominick McClain evaluated him for a preventive health screening. JA 035-52. Nurse Ellis and Dr. McClain noted bruising, tenderness, and significant swelling of his right ankle. JA 042, 049. Mr. Carter told Dr. McClain that he had "a compensation injury from the state of Ohio with chronic neck and back pain which occurred prior to being incarcerated about 2 months ago" and that he had injured his ankle

two days before incarceration. JA 048. He also complained of back, neck, and right ankle pain. JA 046. Dr. McClain observed that Mr. Carter's right ankle exhibited significant swelling, decreased range of motion due to pain, and pain along the medial and lateral ankle. JA 049. He ordered x-rays of Mr. Carter's ankle, neck, and lower back. JA 048, 051. Those x-rays, taken on January 8, 2014, were negative. JA 119, 121, 123, 125.

On January 9, 2014, Dr. Syed A. Zahir, an orthopedic surgeon, examined Mr. Carter, noting that although the ankle was tender and warm to the touch, there was no evidence of any "acute osseous injury," and the x-rays were "unremarkable." JA 127. Dr. Zahir recommended an ankle brace, prescribed an anti-inflammatory medication to be taken twice per day, and recommended a follow-up visit. *Id.* Mr. Carter again sought medical attention for his ankle on January 22, 2014, and was examined by a Physician's Assistant (PA). JA 058. The PA reported that Mr. Carter's right ankle had limited range of motion, was swollen, and exhibited "echymosis [sic]." JA 059. He ordered an MRI and prescribed 800 mg of ibuprofen to be taken twice daily, noting that Mr. Carter was using a crutch and wearing an orthopedic boot brace to walk. JA 059-60.

Dr. Zahir recommended an injection in Mr. Carter's right ankle at a follow-up on February 6, 2014, JA 129, and PA Joe Cooper replaced Mr. Carter's crutch with a walking cane. JA 063. On March 28, 2014, Dr. McClain reevaluated Mr. Carter, noting that Mr. Carter's right ankle remained swollen and painful. JA 065. Although the ankle injury that Mr. Carter suffered shortly before arriving at FCI Beckley caused him pain and discomfort, Mr. Carter alleges that by May 3, 2014, his "ankle was on the road to recovery, it was not swollen," and he was "no longer wearing the air cast or the boot cast that was given to [him] by medical." JA 156.

On the morning of May 3, 2014, Mr. Carter awoke between 5:00 and 6:00 AM to a cell flooded with about two inches of standing water. JA 008. He immediately notified Bureau of Prisons (BOP) employee Officer Lagowski and asked that his cell door be opened so that the water would drain. JA 009. Officer Lagowski refused to open the cell, insisting that Mr. Carter would have to wait for several hours until the next shift change. *Id.* He then left Mr. Carter's cell to complete a "check of the housing unit range." JA 018. Mr. Carter alleges that he was left in the flooded cell for several hours. JA 009.

Later that morning, still confined in his flooded cell, Mr. Carter, with the help of his cane, attempted to make his way across the standing water to use the toilet. *Id.* The flooded water caused his cane to slip from under him, and he fell, injuring his ankle and back. *Id.* Mr. Carter climbed back into his bed and had his cellmate press the in-cell "distress button" in order to alert Officer Lagowski to Mr. Carter's injuries and to the fact that he was in great pain. JA 009, 023. Officer Lagowksi arrived, and Mr. Carter immediately requested medical attention. JA 009. Officer Lagowski left. *Id.* Returning shortly thereafter, he notified Mr. Carter that the lieutenant on duty, Darrell Pritt, directed that Mr. Carter be brought to his office. JA 009, 148. Mr. Carter told Officer Lagowski that because of his injuries he did not feel capable of walking. JA 009. The officer ordered Mr. Carter to walk to the lieutenant's office. *Id.*

Mr. Carter attempted to stand up and walk. *Id.* Again he slipped and fell, this time hitting his head on his wall locker and injuring his neck. JA 009, 023-24. Experiencing great pain, Mr. Carter lay on the floor. JA 024. Officer Lagowski left and returned with another correctional officer, and together they put Mr. Carter into a wheelchair. JA 010. Rather than taking Mr. Carter to get immediate medical

attention as he had requested, the officers took him to Lieutenant Pritt's office, *id.*, where the lieutenant derided him with profanity. *Id.*, JA 024.

Lieutenant Pritt also accused Mr. Carter of fabricating his injuries and ordered that Mr. Carter be sent to the Special Housing Unit (SHU) as punishment for disobeying Officer Lagowski's direct order that Mr. Carter walk to the lieutenant's office. JA 010. Mr. Carter was then placed in the SHU for approximately six days, JA 024, and, according to the Incident Report, lost email and commissary privileges for ninety days. JA 146, 150.

Nurse Owens assessed Mr. Carter in Lieutenant Pritt's office on May 3, 2014, JA 030, and determined that Mr. Carter's ankle was swollen and tender, although it did not show redness or bruising. JA 070. Nurse Owens also observed that Mr. Carter was "unable to tolerate attempts of passive [range of motion]." *Id.* Nurse Owens wrapped Mr. Carter's ankle with an ACE bandage, scheduled Mr. Carter for an ankle x-ray, and concluded that Mr. Carter had no visible physical injuries to his head. JA 70-71.

Mr. Carter diligently sought medical attention for persistent ankle and neck pain resulting from the May 3 incident. JA 035-142. On May

28, 2014, Mr. Carter returned to Health Services complaining of neck pain and rating his pain as six on a one-to-ten scale. JA 073. PA Joe Cooper examined Mr. Carter and noted that Mr. Carter's neck had "limited [range of motion] with extension, flexion, side bending, and axial rotation secondary to pain." *Id.* He also diagnosed Mr. Carter with a neck strain and sprain. JA 073. In June 2014, x-rays were taken of his ankle and back, and both proved negative. JA 131, 133.

Mr. Carter underwent an MRI of his ankle on July 7, 2014. JA 135. The MRI revealed tenosynovitis and diffuse soft tissue swelling of his right ankle. *Id.* Mr. Carter was again evaluated by PA Cooper four days later in the Chronic Care Clinic and complained of constant pain in his right ankle. JA 075. PA Cooper prescribed Mr. Carter 800 mg of ibuprofen and also noted that Mr. Carter's neck sprain had not improved. JA 076-077.

Mr. Carter returned to the clinic on September 16, 2014, complaining of right-ankle pain and saying that his pain had continued to worsen over time. JA 087. PA Fain noted that the ankle was swollen and tender to touch. JA 088. An examination by Dr. McClain on

September 25, 2014, showed "continued chronic swelling to the right ankle." JA 091.

Dr. Zahir evaluated Mr. Carter on October 2, 2014, and diagnosed him with tendonitis of the right foot and ankle. JA 137. He prescribed a steroidal injection and ordered an athletic brace. *Id.* Complaining of worsening ankle pain despite using the athletic brace and cane, Mr. Carter again visited the clinic on November 24, 2014. JA 097. Two days later, Dr. Zahir administered a steroidal injection of methylprednisolone acetate to ease the pain in Mr. Carter's injured ankle. JA 099, 139.

Mr. Carter continued to suffer right-ankle pain into 2015. JA 101-18, 141-42. PA Fain examined him on January 15, 2015, and again on January 22, 2015, with no noted change in his diagnosis. JA 101-08. Dr. Zahir also continued to monitor Mr. Carter, and in February 2015 recommended that Mr. Carter undergo an EMG in his right foot to test for tarsal tunnel syndrome. JA 141. Dr. Zahir also stated that he believed that Mr. Carter "is going to require to have possible surgery, decompression as well as synovectomy and release of the tendon sheath of the flexor halluces longus as well as tibialis posterior" to repair his

ankle and relieve the pain. *Id.*[1] Mr. Carter was evaluated several more times by prison medical staff throughout 2015 for continued complaints of chronic right-ankle pain, JA 109-18, and PA Fain told Mr. Carter on June 1, 2015, that he would schedule an EMG of Mr. Carter's right foot per Dr. Zahir's recommendation, JA 115.

Proceedings in This Case

On May 29, 2014, after being released from the SHU, Mr. Carter filed an administrative complaint with the BOP under the Federal Tort Claims Act (FTCA) based upon these events. JA 021-27. Citing the lack of observable injury to Mr. Carter's head, the negative x-ray, and the "unremarkable" MRI of Mr. Carter's ankle, Mr. Carter's administrative FTCA claim was denied on October 21, 2014. JA 030-31. Mr. Carter timely filed a complaint in the United States District Court for the Southern District of West Virginia on April 21, 2015. JA 007-11. The government moved to dismiss for lack of subject matter jurisdiction,

[1] Dr. Zahir was not alone in thinking that Mr. Carter may require surgery. Although not a part of the district court record, Mr. Carter, in his notice of appeal, included a February 2016 evaluation by Dr. S. Brett Whitfield, another orthopedic surgeon, agreeing with Dr. Zahir's evaluation that "[i]f [Mr. Carter] continues to have difficulty, then he may require reconstruction of his posterior tib tendon." JA 227.

arguing that the FTCA requires more than *de minimis* injuries by federal inmates and that Mr. Carter's injuries did not meet this threshold. JA 014-151. The district court referred the case to a United States Magistrate Judge, who issued his Proposed Findings and Recommendation (PF&R) on January 5, 2016, recommending that the government's motion be granted. JA 167-185. On March 2, 2016, the district court adopted the Magistrate Judge's PF&R and dismissed Mr. Carter's claim. JA 212-220. On March 8, 2016, the district court entered a Judgment Order dismissing Mr. Carter's case. JA 222. Mr. Carter filed a timely notice of appeal on March 17, 2016. JA 224-228.

SUMMARY OF THE ARGUMENT

The district court erred in granting the government's motion to dismiss for lack of subject matter jurisdiction because Mr. Carter alleged injuries that, according to the prison's doctor, likely will require surgery to correct. These injuries simply are not *de minimis*. And even if they are, the FTCA does not require more than *de minimis* injuries to provide the district court jurisdiction.

Mr. Carter has alleged more than *de minimis* injuries. He fell twice because of the prison's negligence. He sustained long-term ankle injuries that have required numerous medical visits, a steroidal injection, an MRI, and now likely will require surgery. He also sustained neck injuries requiring treatment for almost three months. JA 034-142. Those injuries more than surpass any *de minimis* or trivial threshold, if required.

Even if the injuries are *de minimis*, the plain text of the FTCA requires only a "physical injury," not a more than *de minimis* physical injury. 28 U.S.C. § 1346(b)(2). Considering the origin of Section 1346's physical injury requirement, which was enacted as part of the Prison Litigation Reform Act (PLRA), *see* Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, § 806, 110 Stat. 1321, 1321–75 (1996), and using

well-established principles of statutory interpretation, the FTCA's reference to "physical injury" includes any bodily injury, regardless of its severity. The FTCA's "physical injury" requirement, which sets forth no heightened standard, stands in contrast to a different provision of the PLRA in which Congress explicitly required "*serious* physical injury." Prison Litigation Reform Act § 804 (codified at 28 U.S.C. § 1915(g)). Necessitating anything more than a "physical injury" would be contrary to the statutory language and contradict the PLRA's legislative purpose.

Finally, because Mr. Carter sufficiently alleged a tort under West Virginia law (a point the government did not address below), the district court had jurisdiction under Section 1346(b)(1), the FTCA provision establishing the terms of jurisdiction. 28 U.S.C. § 1346(b)(1). As many courts have held, Section 1346(b)(2)'s "physical injury" requirement limits only the *mental and emotional distress damages* available to Mr. Carter, but it does not affect the district court's jurisdiction. Because the district court had jurisdiction, its order should be reversed and the case remanded.

ARGUMENT

This Court has not addressed whether the FTCA's "physical injury" requirement for mental and emotional damages requires plaintiffs to allege more than *de minimis* injury to provide jurisdiction. The district court erred in concluding that it lacked subject matter jurisdiction because Mr. Carter's injuries to his neck and ankle are not *de minimis* if that threshold exists and because, even if his injuries are *de minimis*, the district court had jurisdiction over his complaint.

Initially passed in 1946, the FTCA confers jurisdiction over any claims against the United States for "*personal injury* or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment . . . if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1) (emphasis added). In 1996, Congress enacted the Prison Litigation Reform Act in an attempt to curb the large quantity of frivolous prisoner litigation in the federal courts. *Woodford v. Ngo*, 548 U.S. 81, 84 (2006). In particular, the PLRA amended the FTCA by adding 28 U.S.C. § 1346(b)(2), which bars prisoners convicted of felonies from

bringing an action against the United States "for mental or emotional injury suffered while in custody without a prior showing of physical injury . . . ." Prison Litigation Reform Act § 806.[2] Congress did not define "physical injury." *See* 28 U.S.C. § 1346(b)(2). The language found in other provisions of the PRLA, as well as the statute's general purpose, suggests that Congress intended to give "physical injury" its plain meaning.

Standard of Review

This Court should review de novo the district court's dismissal of Mr. Carter's claim for lack of subject matter jurisdiction. *See, e.g.*, *Durden*, 736 F.3d at 300 (citing *Cooksey v. Futrell*, 721 F.3d 226, 234 (4th Cir. 2013)) ("This Court reviews de novo a district court's decision on a motion to dismiss for lack of subject matter jurisdiction.").

This Court reviews questions of statutory interpretation—such as whether the FTCA requires physical injuries to be more than *de*

[2] The PLRA codified a nearly identical "physical injury" requirement in 42 U.S.C. § 1997e(e), which governs claims brought by state prisoners for constitutional violations under 42 U.S.C. § 1983. Prison Litigation Reform Act § 803. There also it left "physical injury" undefined. *See* 42 U.S.C. § 1997e(e). As with the FTCA's physical injury requirement, this Court has not addressed whether this provision requires more than *de minimis* injury.

minimis—de novo. *See United States v. Ide*, 624 F.3d 666, 668 (4th Cir. 2010) (internal citation omitted) (explaining that "issue of statutory interpretation presents a question of law that we review de novo); *United States v. Segers*, 271 F.3d 181, 183 (4th Cir. 2001) (internal citation omitted) (reviewing a "pure question of statutory interpretation" de novo).

I. THE DISTRICT COURT ERRED IN CONCLUDING THAT MR. CARTER DID NOT SUFFICIENTLY ALLEGE MORE THAN DE MINIMIS PHYSICAL INJURIES.

Although the FTCA does not require more than *de minimis* injury, *see infra*, Section II, this Court need not address that issue because Mr. Carter's injuries far exceed that standard. The district court's conclusion that Mr. Carter alleged only *de minimis* injuries was wrong as a matter of law. Since falling twice in his flooded cell and injuring his neck, head, and ankle, JA 009, Mr. Carter has experienced persistent swelling, tenderness, and numbness in his ankle and foot. Those injuries have required repeated medical consultations and treatment, including walking braces and boots, pain medication, and a steroidal injection. JA 009, 034-142. His ankle damage is so serious that the prison's orthopedic

surgeon has recognized that surgery likely will be required. JA 141.[3] Mr. Carter also had a consistent neck sprain diagnosis for almost three months after his falls. JA 034-142.

These constitute more than fleeting, minor, and trivial *de minimis* injuries. *See, e.g.*, *Taylor v. McDuffie*, 155 F.3d 479, 484 (4th Cir. 1998) (explaining that "temporary swelling and irritation is precisely the type of injury this Court considers *de minimis*"); *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir.1997) (finding a "sore, bruised ear lasting for three days" to be *de minimis*). Instead, Mr. Carter has alleged long-lasting and serious injuries. *Cf. Hudson v. McMillian*, 503 U.S. 1, 10 (1992). In *Hudson*, the Supreme Court held that blows resulting in "bruises, swelling, loosened teeth, and a cracked dental plate, are not *de minimis* for Eighth Amendment purposes." *Id.* Mr. Carter experienced prolonged bruising and swelling. JA 034-142. But his injuries cut more deeply. The prison's orthopedic surgeon recognized that Mr. Carter likely will require surgery to treat his ankle injury. JA 141. And numerous medical staff have prescribed pain medication, a brace for his ankle, and a

[3] Dr. Whitfield, another orthopedic surgeon, agreed with Dr. Zahir's February 2015 evaluation that Mr. Carter may need surgery if his injuries do not improve. JA 227. *See supra* note 1.

steroidal injection to treat the ankle injury. JA 034-142, 58, 60. In addition, he suffered a neck sprain as a result of the second fall, JA 073, an injury that lingered for over two months. JA 076. Because Mr. Carter's injuries require extensive medical attention and have not been remedied over time, as would occur with bruising, these injuries go well beyond Hudson's.

Mr. Carter's enduring ankle injury also has caused lasting interference with his mobility, a more than *de minimis* injury. *See, e.g.*, *Ussery v. Mansfield*, 786 F.3d 332, 337-38 (4th Cir. 2015).[4] In *Ussery*, this Court found that injuries, including "severe lacerations," "extensive bruising," "chronic swelling and loss of feeling," and "loss of vision in his right eye," qualified as more than *de minimis* under the Eighth Amendment because they "could have an enduring impact on health and

[4] This Court's published cases discussing *de minimis* injury have primarily been in the context of Eighth and Fourth Amendment excessive force claims. *See, e.g.*, *Ussery*, 786 F.3d 332; *Young v. Prince George's Cty.*, 355 F.3d 751 (4th Cir. 2004); *Taylor*, 155 F.3d 479. Most of those cases have been abrogated because the Supreme Court has since held that Eighth Amendment excessive force claims do not require more than *de minimis* injuries. *See Wilkins v. Gaddy*, 559 U.S. 34, 38-39 (2010) (holding that proper focus of excessive force claims is the force used). But because this Court developed a *de minimis* standard in those cases, this brief relies on them where relevant.

wellbeing" and were the "sorts of injuries that may affect mobility . . . and other daily functions for an extended period of time." *Id.*[5] As in *Ussery*, Mr. Carter has experienced impaired mobility as a result of his injuries, inhibiting his daily activities. His pain and frequent need for medical attention also has negatively affected his wellbeing. Not only does he now need a cane and brace to walk, JA 060, but he has needed pain medication and a steroidal injection to control the swelling, tenderness, and numbness of his ankle and foot, JA 034-142, 99, 137, 139. By any definition, this Court should find Mr. Carter's injuries more than *de minimis*. *See Samuelson v. City of New Ulm*, 455 F.3d 871, 876 (8th Cir. 2006) (rejecting the district court's *de minimis* injury conclusion because appellant needed surgery and his pain persisted for "almost a year after the incident"). As with the appellant in *Samuelson*, Mr. Carter likely will require surgery, JA 141, and his pain has lasted significantly longer than one year, JA 034-142.

[5] Indeed, the Court in *Ussery* held that the plaintiff's injuries were sufficiently severe that, for purposes of qualified immunity, this Court's law was clearly established that these were more than *de minimis* injuries. *Ussery*, 786 F.3d at 335-38.

Because Mr. Carter requested immediate medical care and required persistent treatment for over twenty-one months, his injuries are more than *de minimis*. *See Taylor*, 155 F.3d at 485. In *Taylor*, this Court found that injuries the appellant sustained from the use of force were *de minimis* because "[a]lthough [Appellant] now claims he was in excruciating pain, he did not seek medical treatment for at least twelve hours after the incident . . . [and] no medical treatment was required or prescribed for any of his injuries." *Id.* Not only did Mr. Carter request immediate medical attention following his falls, JA 009, but he also has required sustained medical attention and treatment, including visits to a specialist doctor, x-rays and an MRI, medications, a brace, and a steroidal injection in the years following the incident, JA 034-142. These are not *de minimis* injuries.

Finally, Mr. Carter's injuries qualify as more than *de minimis* because they have endured for close to two years. JA 034-142; *see Young v. Prince George's Cty.*, 355 F.3d 751, 758 n.3 (4th Cir. 2004) (finding that "a contusion, cut to [the appellant's] lips, bruises, lesions to his wrist, and a strained neck and back" were more than *de minimis* when the neck injuries continued for almost two and a half years). In *Copeland v. Locke*,

the Eleventh Circuit found that lacerations from handcuffs and a chronic injury to the appellant's knee, which "caus[ed] him difficulty in walking," were "not *de minimis* as a matter of law." 613 F.3d 875, 881 (11th Cir. 2010). Medical personnel have similarly, and repeatedly, labeled Mr. Carter's ankle injury "chronic," JA 048, 059, 73, and his need for a cane and brace evidence his difficulty walking, JA 060. Thus, Mr. Carter's injuries, and the sustained hardship they have caused, qualify as more than *de minimis*. Because Mr. Carter alleged more than *de minimis* injuries, the district court erred in dismissing his complaint.

II. 28 U.S.C. § 1346(b)(2) DOES NOT REQUIRE MORE THAN *DE MINIMIS* PHYSICAL INJURY TO RECOVER DAMAGES FOR MENTAL AND EMOTIONAL HARM.

Although Mr. Carter alleged more than *de minimis* physical injury, he was not required to do so because the FTCA does not require a threshold physical injury of a certain severity. The plain meaning of "physical injury" does not prevent physical injuries, even *de minimis* injuries, from being actionable for purposes of the FTCA. This Court should give "physical injury" its plain meaning in light of well-established principles of statutory interpretation. Abiding by the plain meaning would yield neither a result demonstrably at odds with the intent of

Congress nor an absurd result. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571, 575 (1982) (recognizing these exceptions to adhering to the plain meaning); *In re Sunterra Corp.*, 361 F.3d 257, 265 (4th Cir. 2004) (same). These exceptions apply only in "exceptionally rare" circumstances not present here. *In re Sunterra Corp.*, 361 F.3d at 265 ("[W]e have recognized that 'the instances in which either of these exceptions to the Plain Meaning Rule apply are, and should be, exceptionally rare'" (quoting *Hillman v. I.R.S.*, 263 F.3d 338, 342 (4th Cir. 2001))).

A. Well-Established Principles of Statutory Interpretation Require That "Physical Injury" Be Given Its Plain and Ordinary Meaning.

The plain meaning of "physical injury" refers to *any* injury to the body. Because the FTCA does not define "physical injury," *see* 28 U.S.C. § 1346(b)(2), this Court should give the phrase its ordinary and natural meaning. *See, e.g.*, *Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870, 876 (2014) (explaining that "[i]t is a 'fundamental canon of statutory construction' that, 'unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning'" (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979))).

Looking then to the plain meaning of "physical injury," dictionary definitions of "physical injury" make clear that the term refers to *any* injury to the body. Black's Law Dictionary defines "bodily injury" as follows: "Physical pain, illness, or *any* impairment of physical condition." *Injury*, Black's Law Dictionary (6th ed. 1990) (emphasis added).[6] Similarly, The Oxford Dictionary and Thesaurus: American Edition defines "physical" as "of or concerning the body," *Physical*, The Oxford Dictionary and Thesaurus: American Edition (1996), and "injury" as "physical harm or damage," *Injury*, The Oxford Dictionary and Thesaurus: American Edition (1996). "Physical injury" therefore means "physical harm or damage" that is "of or concerning the body." These definitions in no way suggest that a "physical injury" must meet a certain quantum or level of severity.

The history of Section 1346(b)(2)'s "physical injury" requirement helps illustrate that Congress intended that plain meaning. As discussed above, Congress added the "physical injury" requirement to the FTCA in

[6] Black's continues the definition of "bodily injury" as follows: "'Serious bodily injury' means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." *Injury*, Black's Law Dictionary (6th ed. 1990).

1996 as part of the broader Prison Litigation Reform Act, which limited prisoner litigation in a variety of ways. *See infra* Section II.B. Of most significance, the PLRA amended 28 U.S.C. § 1915 to preclude a prisoner who has had three or more prior complaints dismissed as frivolous, malicious, or for failure to state a claim from proceeding *in forma pauperis* "unless the prisoner is under imminent danger of *serious physical injury*." *See* 28 U.S.C. § 1915(g) (emphasis added); Prison Litigation Reform Act § 804.

The difference between the two sections demonstrates that Congress did not intend for Section 1346(b)(2)'s term "physical injury" to require a heightened level of bodily injury. That change of language also illustrates that when Congress wanted to require more than *de minimis* injury, it knew how to write it into the PLRA. *See Sebelius v. Cloer*, 133 S. Ct. 1886, 1894 (2013) ("We have long held that '[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'" (quoting *Bates v. United States*, 522 U.S. 23, 29-30 (1997))); *Gaines Motor Lines, Inc. v. Klaussner Furniture Indus., Inc.*, 734 F.3d 296, 303

(4th Cir. 2013) (explaining that the "meaning of a statutory provision is not to be determined in isolation" and the Court should look to "the statute as a whole and to its object and policy" (quoting *Crandon v. United States*, 494 U.S. 152, 158 (1990))). But Congress chose to leave "physical injury" in Section 1346(b)(2) wholly unqualified and unaltered.

To be sure, a number of other courts of appeals have required more than *de minimis* injury under the PLRA.[7] *See*, *e.g.*, *Oliver v. Keller*, 289 F.3d 623 (9th Cir. 2002); *Siglar*, 112 F.3d 191. But those courts have strayed from the plain meaning of the statute. In *Oliver*, for example, the Ninth Circuit rejected the argument that the PLRA bars only claims that do not allege any physical injury because "such an interpretation would ignore the intent behind the statute." 289 F.3d at 628.[8]

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[7] Most of these cases were decided under the parallel "physical injury" requirement that the PLRA added to 42 U.S.C. § 1997e(e), which governs claims brought by state prisoners for constitutional violations under 42 U.S.C. § 1983.

[8] At least one court has held that the PLRA requires more than *de minimis* injury because it interpreted *Hudson*, 503 U.S. 1, to require more than *de minimis* injury for Eighth Amendment excessive force claims. *See Siglar*, 112 F.3d at 193-94. That analysis has since proven flawed because Eighth Amendment excessive force claims do not require more than *de minimis* injury. *See Wilkins v. Gaddy*, 559 U.S. 34, 38-39 (2010) (holding that Eighth Amendment excessive force claims focus on

As the Supreme Court has warned, however, if "the language of a provision . . . is sufficiently clear in its context and not at odds with the legislative history," courts must adhere to that meaning. *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (quoting *Aaron v. SEC*, 446 U.S. 680, 695 (1980)). It "frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law," because it is for Congress to decide, through the statutory language it chooses, "what competing values will or will not be sacrificed to the achievement of a particular objective." *Id.*; *see Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2309 (2013). The plain language of the FTCA, particularly when read in conjunction with Section 1915(g)'s "serious physical injury" requirement, demonstrates that Congress intended to impose only a requirement that petitioners allege physical injury.

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the force used and do not necessarily require more than *de minimis* injury); *Oliver*, 289 F.3d at 628 (rejecting *Siglar*'s reasoning).

B. Adhering to the Plain Text of Subsection (b)(2) Does Not Yield a Result Either Demonstrably at Odds With Congressional Intent or an Absurd Result.

This Court should adhere to the plain meaning of "physical injury" because there is no good reason not to do so. Doing so would not produce a result demonstrably at odds with the intent of Congress, especially in light of the myriad restrictive provisions Congress passed in the PLRA. For a result to be demonstrably at odds with the intent of the drafters, "the contrary intent must have been clearly expressed by the legislative body." *Md. State Dep't of Educ. v. U.S. Dep't of Veterans Affairs*, 98 F.3d 165, 169 (4th Cir. 1996) (citing *Russello v. United States*, 464 U.S. 16, 20 (1983)). Otherwise, "we must assume that Congress intended to convey the language's ordinary meaning." *Id.* No contrary intent appears here. *See supra* Section II.A.

The plain meaning of the "physical injury" closely adheres to the PLRA's legislative history. In fact, the Act's legislative history strongly suggests that the Act did not create a *de minimis* physical injury standard, but rather a general bar to claims for injuries that may arise from the general discomforts of prison but have no underlying physical component. *See Hudson*, 503 U.S. at 9 (explaining that "routine

discomfort is 'part of the penalty that criminal offenders pay for their offenses against society'" (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981))); *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981) (rejecting an Eighth Amendment Section 1983 claim and explaining that "the Constitution does not mandate comfortable prisons, and prisons . . . which house persons convicted of serious crimes, cannot be free of discomfort"); *cf. Mitchell v. Horn*, 318 F.3d 523, 535 (3rd Cir. 2003) ("[E]motional injuries are inherently difficult to verify and therefore tend to be concocted for frivolous suits") (internal citation omitted). In introducing the PLRA in the Senate, Senator Bob Dole focused precisely on such claims, explaining: "Prisoners have filed lawsuits claiming such grievances as insufficient storage locker space, being prohibited from attending a wedding anniversary party, and yes, being served creamy peanut butter instead of the chunky variety they had ordered." 141 Cong. Rec. 14,570 (1995). Senator John Kyl, a co-sponsor of the PLRA, outlined the purpose of each section of the Act, but made no mention of a *de minimis* "physical injury" standard; he explained only that "[Section 1346(b)(2)] will bar inmate lawsuits for mental or emotional injury

suffered while in custody unless they can show physical injury." 141 Cong. Rec. 14,572-73 (1995).

Additionally, nothing in the statute suggests that the lion's share of the responsibility to restrict frivolous prisoner claims was placed on Section 1346(b)(2). To the contrary, the Supreme Court has deemed the "centerpiece" of this effort to be the PLRA's administrative remedy exhaustion provision. *Woodford*, 548 U.S. at 84; 42 U.S.C. § 1997e(a). But the restrictive provisions of the PLRA are not meant to work alone to curtail frivolous suits; they are intended to operate in tandem. *Woodford*, 548 U.S. at 84. The Act's other contributing provisions include: requiring filing fees be paid in full if filing *in forma pauperis*, 28 U.S.C. § 1915(b); requiring district courts to dismiss all actions that clearly lack merit, 42 U.S.C. § 1997e(c); restricting attorney's fees, 42 U.S.C. § 1997e(d); and permitting district courts to revoke earned good time credit if an inmate's claim is malicious or knowingly false, 28 U.S.C. § 1932.[9] Prison Litigation Reform Act §§ 803-04, 809. In light of the above, this Court should not approach the PLRA's broad goal of curtailing

[9] This provision is not to be confused with another statute codified at 28 U.S.C. § 1932 that pertains to the Judicial Panel on Multidistrict Litigation.

frivolous prisoner litigation as an invitation to create a *de minimis* physical injury bar in Section 1346(b)(2), because the statutory language is clear and not at odds with the Act's legislative history.

Nor does the plain meaning of "physical injury" render an absurd result. This Court has explained that whenever "it is plausible that Congress intended the result compelled by the Plain Meaning Rule, [a court] must reject an assertion that such an application is absurd." *In re Sunterra Corp.*, 361 F.3d at 268. The PLRA's legislative history and statutory scheme, as discussed above, suggest that that it is more than plausible—indeed it is even probable—that Congress intended that "physical injury" be given its plain meaning.

To be sure, at least one court has suggested that using the plain meaning of physical injury "would produce an unintended (indeed absurd) result." *Mitchell*, 318 F.3d at 535. But this liberal use of the absurdity doctrine to override plain meaning is contrary to this Court's principled approach to do so in "exceptionally rare circumstances" where it is implausible that Congress intended the result. *See In re Sunterra Corp.*, 361 F.3d at 265, 268. Mr. Carter's allegations of injury, *see supra* Section I, have more than sufficiently alleged physical injury under the

FTCA. As a result, the district court had jurisdiction over his claim for mental and emotional distress damages.

III. THE DISTRICT COURT HAD JURISDICTION EVEN IF MR. CARTER DID NOT ALLEGE SUFFICIENT INJURY TO RECOVER MENTAL AND EMOTIONAL DISTRESS DAMAGES.

Even if this Court were to both require more than *de minimis* injury and find Mr. Carter's injuries *de minimis*, the district court still had jurisdiction over Mr. Carter's complaint. Section 1346(b)(1) of the FTCA confers jurisdiction over Mr. Carter's claims, and the physical injury limitation in subsection (b)(2) does not strip that jurisdiction. Section 1346(b)(2)'s physical injury requirement limits, at most, the availability of *damages* for mental and emotional distress, not the jurisdiction of the district court. *See*, *e.g.*, *Mitchell*, 318 F.3d at 533 (holding that the PLRA's physical injury requirement applies only to claims for compensatory damages and not to claims for nominal or punitive damages).

Section 1346(b)(1) waives sovereign immunity and grants district courts "exclusive jurisdiction" over claims against the United States "if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. §

1346(b)(1); *Kerns v. United States*, 585 F.3d 187, 194 (4th Cir. 2009) (explaining that the FTCA "grants jurisdiction to the district courts" and that "the underlying cause of action in an FTCA claim is derived from applicable state law"). This Court has held that "[t]he FTCA does not create new causes of action; instead, it 'serves to convey jurisdiction when the alleged breach of duty is tortious under state law.'" *Medina v. United States*, 259 F.3d 220, 223 (4th Cir. 2001) (quoting *Goldstar (Panama) S.A. v. United States*, 967 F.2d 965, 969 (4th Cir. 1992)). Thus, to determine subject matter jurisdiction under Section 1346(b)(1), the proper test is one of state tort law liability.

The government has never argued that Mr. Carter did not sufficiently allege a tort under West Virginia law. JA 014. Nor could it. In order to state a negligence claim under West Virginia tort law, Mr. Carter must allege (1) the defendant owed him a duty; (2) a negligent breach of that duty; and (3) injuries resulting from that breach. *Wheeling Park Comm'n v. Dattolli*, 787 S.E.2d 546, 551 (W. Va. 2016). Mr. Carter has alleged sufficient facts stating a West Virginia tort, particularly given that at this stage, his factual allegations must be taken as true. *Durden*, 736 F.3d at 300. First, the Supreme Court has held that

18 U.S.C. § 4042 sets forth a duty of care requiring "the exercise of ordinary diligence to keep prisoners safe and free from harm." *Jones v. United States*, 534 F.2d 53, 54 (5th Cir. 1976); *United States v. Muniz*, 374 U.S. 150, 164-65 (1963) (holding that "the duty of care owed by the Bureau of Prisons to federal prisoners is fixed by 18 U.S.C. § 4042"); *Tyree v. United States*, 642 Fed. App'x. 228, 230 (4th Cir. 2016). Second, Mr. Carter alleged a negligent breach of that duty. JA 9-10 (alleging, among other facts, that officers left him "in the flooded cell for several hours" causing him to fall when he tried to use the bathroom and then directly "order[ed] Plaintiff to walk to Lieutenant's office after his first fall," causing him to fall a second time). Finally, Mr. Carter alleged that the breach of duty caused him injury. JA 010; *see supra* Section I; *Rhodes v. E.I. du Pont de Nemours and Co.*, 636 F.3d 88, 94 (4th Cir. 2011) (holding that West Virginia law requires only a showing of "some 'injury' to the plaintiff"). Section 1346(b)(1) therefore provided the district court with jurisdiction over Mr. Carter's complaint.

Section 1346(b)(2)'s "physical injury" requirement does not strip the district court of jurisdiction granted by Section 1346(b)(1). Section 1346(b)(2) merely limits recovery of damages "for" emotional or mental

distress. *See*, *e.g.*, *Calhoun v. DeTella*, 319 F.3d 936, 940 (7th Cir. 2003) (holding that absent a showing of physical injury, PLRA bars recovery of "compensatory damages for mental and emotional injury" but does not foreclose award of nominal or punitive damages or other damages that are not "for" any mental or emotional injuries suffered); *Hutchins v. McDaniels*, 512 F.3d 193, 196-98 (5th Cir. 2007) (joining the "vast majority of [its] sister circuits" in holding that PLRA does not bar "recovery of nominal or punitive damages" even in the absence of any physical injury); *Brooks v. Warden*, 800 F.3d 1295, 1307-09 (11th Cir. 2015) (holding that the PLRA does not bar nominal damages even in the absence of physical injury). Thus, even if Mr. Carter failed to establish sufficient physical injury to recover damages for emotional or mental injury, this Court should join the "vast majority of [its] sister circuits" and hold that the district court still had jurisdiction over his complaint.[10]

[10] Mr. Carter did not specifically assert a claim for nominal damages, but he requested "compensatory damages . . . and any other relief that this Court deems just and proper." JA 011. That language is sufficiently broad to cover nominal damages.

CONCLUSION

The district court erred in concluding that Mr. Carter's injuries—including a neck sprain and a long-lasting ankle injury requiring intensive treatment and, according to prison doctors, likely surgery—constituted *de minimis* injuries. But the district court should not have reached that question because the text of the FTCA counsels otherwise, and the PLRA's statutory scheme and legislative history evince Congress's strong intent to give "physical injury" in Section 1346(b)(2) its plain and ordinary meaning. Finally, even if Mr. Carter's injuries were *de minimis*, Section 1346(b)(1) conferred jurisdiction over his negligence claim. For these reasons, this Court should reverse the order and judgment of the district court and remand with instructions to allow Mr. Carter's FTCA claim to proceed.

STATEMENT REGARDING ORAL ARGUMENT

Mr. Carter respectfully requests oral argument pursuant to Federal Rule of Appellate Procedure 34(a) and Fourth Circuit Rule 34(a). This Court has never addressed whether an inmate must show more than *de minimis* injury to establish subject matter jurisdiction under the FTCA, 28 U.S.C. § 1346(b). Oral argument will provide this Court with the opportunity to determine whether the FTCA requires more than *de minimis* injury, and, if so, the extent of the injury required.

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December 12, 2016

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,994 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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I, Erica Hashimoto, certify that on December 12, 2016, a copy of Appellant's Brief and Joint Appendix was served via the Court's ECF system on:

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Statutory Supplement

18 U.S.C.A. § 4042

§ 4042. Duties of Bureau of Prisons

Effective: July 29, 2010

(a) In general.--The Bureau of Prisons, under the direction of the Attorney General, shall--

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) provide technical assistance to State, tribal, and local governments in the improvement of their correctional systems;

(5) provide notice of release of prisoners in accordance with subsections (b) and (c);

(D)[1] establish prerelease planning procedures that help prisoners--

(i) apply for Federal and State benefits upon release (including Social Security Cards, Social Security benefits, and veterans' benefits); and

(ii) secure such identification and benefits prior to release, subject to any limitations in law; and

(E)[2] establish reentry planning procedures that include providing Federal prisoners with information in the following areas:

(i) Health and nutrition.

(ii) Employment.

(iii) Literacy and education.

(iv) Personal finance and consumer skills.

(v) Community resources.

(vi) Personal growth and development.

(vii) Release requirements and procedures.

(b) Notice of release of prisoners.--(1) At least 5 days prior to the date on which a prisoner described in paragraph (3) is to be released on supervised release, or, in the case of a prisoner on supervised release, at least 5 days prior to the date on which the prisoner changes residence to a new jurisdiction, written notice of the release or change of residence shall be provided to the chief law enforcement officers of each State, tribal, and local jurisdiction in which the prisoner will reside. Notice prior to release shall be provided by the Director of the Bureau of Prisons. Notice concerning a change of residence following release shall be provided by the probation officer responsible for the supervision of the released prisoner, or in a manner specified by the Director of the Administrative Office of the United States Courts. The notice requirements under this subsection do not apply in relation to a prisoner being protected under chapter 224.

(2) A notice under paragraph (1) shall disclose--

(A) the prisoner's name;

(B) the prisoner's criminal history, including a description of the offense of which the prisoner was convicted; and

(C) any restrictions on conduct or other conditions to the release of the prisoner that are imposed by law, the sentencing court, or the Bureau of Prisons or any other Federal agency.

(3) A prisoner is described in this paragraph if the prisoner was convicted of--

(A) a drug trafficking crime, as that term is defined in section 924(c)(2); or

(B) a crime of violence (as defined in section 924(c)(3)).

(c) Notice of sex offender release.--(1) In the case of a person described in paragraph (3), or any other person in a category specified by the Attorney General, who is released from prison or sentenced to probation, notice shall be provided to--

(A) the chief law enforcement officer of each State, tribal, and local jurisdiction in which the person will reside; and

(B) a State, tribal, or local agency responsible for the receipt or maintenance of sex offender registration information in the State, tribal, or local jurisdiction in which the person will reside.

The notice requirements under this subsection do not apply in relation to a person being protected under chapter 224.

(2) Notice provided under paragraph (1) shall include the information described in subsection (b)(2), the place where the person will reside, and the information that the person shall register as required by the Sex Offender Registration and Notification Act. For a person who is released from the custody of the Bureau of Prisons whose expected place of residence following release is known to the Bureau of Prisons, notice shall be provided at least 5 days prior to release by the Director of the Bureau of Prisons. For a person who is sentenced to probation, notice shall be provided promptly by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts. Notice concerning a subsequent change of residence by a person described in paragraph (3) during any period of probation, supervised release, or parole shall also be provided to the agencies and officers specified in paragraph (1) by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts.

(3) The Director of the Bureau of Prisons shall inform a person who is released from prison and required to register under the Sex Offender Registration and Notification Act of the requirements of that Act as they apply to that person and the same information shall be provided to a person sentenced to probation by the probation officer responsible for supervision of that person.

[**(4)** Repealed. Pub.L. 109-248, Title I, § 141(h), July 27, 2006, 120 Stat. 604.]

(5) The United States and its agencies, officers, and employees shall be immune from liability based on good faith conduct in carrying out this subsection and subsection (b).

(d) Application of section.--This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 849; Pub.L. 90-371, July 1, 1968, 82 Stat. 280; Pub.L. 103-322, Title II, § 20417, Sept. 13, 1994, 108 Stat. 1834; Pub.L. 105-119, Title I, § 115(a)(8)(A), Nov. 26, 1997, 111 Stat. 2464; Pub.L. 109-248, Title I, § 141(f) to (h), July 27, 2006, 120 Stat. 603; Pub.L. 110-199, Title II, § 231(d)(1), Apr. 9, 2008, 122 Stat. 685; Pub.L. 111-211, Title II, § 261(a), July 29, 2010, 124 Stat. 2299.)

Footnotes

[1] So in original. Probably should be (6).

[2] So in original. Probably should be (7).

18 U.S.C.A. § 4042, 18 USCA § 4042
Current through P.L. 114-248.

End of Document

28 U.S.C.A. § 1291

§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, § 12(e), 72 Stat. 348; Apr. 2, 1982, Pub.L. 97-164, Title I, § 124, 96 Stat. 36.)

28 U.S.C.A. § 1291, 28 USCA § 1291
Current through P.L. 114-248.

End of Document

28 U.S.C.A. § 1346

§ 1346. United States as defendant

Effective: March 7, 2013

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 7104(b)(1) and 7107(a)(1) of title 41. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of Title 18).

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

(g) Subject to the provisions of chapter 179, the district courts of the United States shall have exclusive jurisdiction over any civil action commenced under section 453(2) of title 3, by a covered employee under chapter 5 of such title.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 933; Apr. 25, 1949, c. 92, § 2(a), 63 Stat. 62; May 24, 1949, c. 139, § 80(a), (b), 63 Stat. 101; Oct. 31, 1951, c. 655, § 50(b), 65 Stat. 727; July 30, 1954, c. 648, § 1, 68 Stat. 589; July 7, 1958, Pub.L. 85-508, § 12(e), 72 Stat. 348; Aug. 30, 1964, Pub.L. 88-519, 78 Stat. 699; Nov. 2, 1966, Pub.L. 89-719, Title II, § 202(a), 80 Stat. 1148; July 23, 1970, Pub.L. 91-350, § 1(a), 84 Stat. 449; Oct. 25, 1972, Pub.L. 92-562, § 1, 86 Stat. 1176; Oct. 4, 1976, Pub.L. 94-455, Title XII, § 1204(c) (1), Title XIII, § 1306(b) (7), 90 Stat. 1697, 1719; Nov. 1, 1978, Pub.L. 95-563, § 14(a), 92 Stat. 2389; Apr. 2, 1982, Pub.L. 97-164, Title I, § 129, 96 Stat. 39; Sept. 3, 1982, Pub.L. 97-248, Title IV, § 402(c) (17), 96 Stat. 669; Oct. 22, 1986, Pub.L. 99-514, § 2, 100 Stat. 2095; Oct. 29, 1992, Pub.L. 102-572, Title IX, § 902(b)(1), 106 Stat. 4516; Apr. 26, 1996, Pub.L. 104-134, Title I, § 101[(a)][Title VIII, § 806], 110 Stat. 1321-75; renumbered Title I May 2, 1996, Pub.L. 104-140, § 1(a), 110 Stat. 1327; amended Oct. 26, 1996, Pub.L. 104-331, § 3(b)(1), 110 Stat. 4069; Jan. 4, 2011, Pub.L. 111-350, § 5(g)(6), 124 Stat. 3848; Pub.L. 113-4, Title XI, § 1101(b), Mar. 7, 2013, 127 Stat. 134.)

28 U.S.C.A. § 1346, 28 USCA § 1346
Current through P.L. 114-248.

End of Document

28 U.S.C.A. § 1915

§ 1915. Proceedings in forma pauperis

Effective: April 26, 1996

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of--

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States

shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 954; May 24, 1949, c. 139, § 98, 63 Stat. 104; Oct. 31, 1951, c. 655, § 51(b), (c), 65 Stat. 727; Sept. 21, 1959, Pub.L. 86-320, 73 Stat. 590; Oct. 10, 1979, Pub.L. 96-82, § 6, 93 Stat. 645; Dec. 1, 1990, Pub.L. 101-650, Title III, § 321, 104 Stat. 5117; Apr. 26, 1996, Pub.L. 104-134, Title I, § 101[(a)] [Title VIII, § 804(a), (c) to (e)], 110 Stat. 1321-73, 1321-74, 1321-75; renumbered Title I May 2, 1996, Pub.L. 104-140, § 1(a), 110 Stat. 1327.)

28 U.S.C.A. § 1915, 28 USCA § 1915
Current through P.L. 114-248.

End of Document

28 U.S.C.A. § 1932

§ 1932.[1] Revocation of earned release credit

Effective: April 26, 1996

In any civil action brought by an adult convicted of a crime and confined in a Federal correctional facility, the court may order the revocation of such earned good time credit under section 3624(b) of title 18, United States Code, that has not yet vested, if, on its own motion or the motion of any party, the court finds that--

(1) the claim was filed for a malicious purpose;

(2) the claim was filed solely to harass the party against which it was filed; or

(3) the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court.

CREDIT(S)

(Added Pub.L. 104-134, Title I, § 101[(a)][Title VIII, § 809(a)], Apr. 26, 1996, 110 Stat. 1321-76; renumbered Title I Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

Footnotes

[1] Another section 1932 is set out ante.

28 U.S.C.A. § 1932, 28 USCA § 1932
Current through P.L. 114-248.

End of Document

42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights

Effective: October 19, 1996

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

42 U.S.C.A. § 1983, 42 USCA § 1983
Current through P.L. 114-248.

End of Document

42 U.S.C.A. § 1997e

§ 1997e. Suits by prisoners

Effective: March 7, 2013

(a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

(b) Failure of State to adopt or adhere to administrative grievance procedure

The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.

(c) Dismissal

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) Attorney's fees

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988[1] of this title, such fees shall not be awarded, except to the extent that--

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988[1] of this title; and

(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of Title 18 for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 1988[1] of this title.

(e) Limitation on recovery

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 (as defined in section 2246 of Title 18).

(f) Hearings

(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any

hearing held at the facility.

(g) Waiver of reply

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) "Prisoner" defined

As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

CREDIT(S)

(Pub.L. 96-247, § 7, May 23, 1980, 94 Stat. 352; Pub.L. 103-322, Title II, § 20416(a), Sept. 13, 1994, 108 Stat. 1833; Pub.L. 104-134, Title I, § 101[(a)][Title VIII, § 803(d)], Apr. 26, 1996, 110 Stat. 1321-71; renumbered Title I Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub.L. 113-4, Title XI, § 1101(a), Mar. 7, 2013, 127 Stat. 134.)

Footnotes

[1] See Reference in Text note below.

42 U.S.C.A. § 1997e, 42 USCA § 1997e
Current through P.L. 114-248.

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