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Prisoners, Punitive Damages, and Precedent, Oh My! The Eleventh Circuit in *Hoever* Overrules Prior Interpretation of the Prison Litigation Reform Act

Tatiana Dobretsova*

I. INTRODUCTION

Imagine you are a prisoner at Dooly State Prison in Unadilla, Georgia. A squad of about thirty officers march into the prison one day, dressed in riot gear, chanting, “kill, kill, kill.”¹ The officers begin cursing and ordering inmates to get out of their cells, even yanking some by their shirts if they are not moving quickly enough.² As you and the other inmates rush out of your cells, you are subjected to body cavity searches—you are ordered to strip naked, squat and cough, turn

*To Professor Cathren Page, my faculty advisor, thank you for your advice, edits, and guidance throughout this process. To Professors Linda Jellum and Timothy Floyd, thank you for your notes, wisdom, and support. To my family, thank you for inspiring me and for always believing in me. To my friends, thank you for making me laugh when times are stressful. And to Amar Dhingra, my husband and brilliant partner, a special thank you for your love, encouragement, support, and patience as I navigate law school.

1. Petition for Writ of Certiorari, *Harris v. Garner*, 532 U.S. 1065 (2001) (No. 00-484), 2000 WL 34000105, at *3. The set of facts described in the Introduction occurred during the prison shakedown that became the basis of *Harris v. Garner*, the first United States Court of Appeals for the Eleventh Circuit opinion interpreting section 1997e(e) of the Prison Litigation Reform Act. *Harris v. Garner*, 190 F.3d 1279 (11th Cir. 1999), *reh'g en banc granted, vacated*, 197 F.3d 1059 (11th Cir. 1999), *opinion reinstated in part on reh'g*, 216 F.3d 970 (11th Cir. 2000), *overruled by Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021). See 42 U.S.C. § 1997e(e) (2021).

2. Petition for Writ of Certiorari, 2000 WL 34000105, at *3. One such inmate, Willie Hooks, was moving slowly because he had severe medical problems with his leg and back. Because of this, he “was yanked by his shirt collar and pulled outside.” *Id.*

around, and bend over, all in the presence of several officers.³ An officer hands you a razor and forces you to dry shave.⁴ Meanwhile, officers are yelling obscenities, pointing and laughing at you, and threatening you.⁵ You see inmates' personal items and religious materials dumped on the floor, thrown into toilets, and destroyed.⁶ You hear an officer yelling at another inmate that if the inmate says anything about this incident, he will be locked up and beaten until he does not "want to be gay anymore."⁷ Another inmate is ordered to hold his right foot in his left hand, then to switch, and switch again quickly, while officers watch and laugh at him.⁸

These shocking events did indeed occur at Dooley State Prison on October 23, 1996, and were the premise of *Harris v. Garner*,⁹ the Eleventh Circuit's first opinion interpreting section 1997e(e) of the Prison Litigation Reform Act.¹⁰ When the victims of this harassment sought punitive damages, their claims were barred because they were not able to meet section 1997e(e)'s physical injury requirement.¹¹ Even the victim who was forced to dry shave was deemed unable to meet the physical injury requirement, and denied punitive damages.¹²

Enacted in 1996, the Prison Litigation Reform Act (PLRA)¹³ was designed to curtail meritless and frivolous prisoner claims in federal

3. *Id.* Officers also ordered prisoners to open their mouths, run their fingers through their hair, lift their genitals, and "spread their buttocks so that their anuses were exposed." This all occurred in the presence of officers of the opposite sex, many of whom whispered to each other, laughed, and pointed at the inmates. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* at *3-4. This particular inmate, William Dailey, was ordered by two officers to strip. The officers called Dailey "one of them fuck boys," and shoved him backwards to the ground." Officers conducted a body cavity search on Dailey, harassed and threatened him, then told him if he said anything about the incident, "they would lock him up and 'beat' his 'ass' until he did not 'want to be gay anymore.'" Half-naked and with his pants falling down, Dailey was ordered to go downstairs, where he had to pass a group of women. *Id.*

8. *Id.* at *4. Samuel Locklear, while naked, was ordered to perform a "tap dance," where he had to repeatedly hold one foot and then quickly switch to the other for about a minute. As he did this, two officers watched and laughed. *Id.* at *4, *12.

9. *Harris*, 190 F.3d 1279 (11th Cir. 1999), *reh'g en banc granted, vacated*, 197 F.3d 1059 (11th Cir. 1999), *opinion reinstated in part on reh'g*, 216 F.3d 970 (11th Cir. 2000), *overruled by Hoever*, 993 F.3d 1353.

10. 42 U.S.C. § 1997e(e). See *Hoever*, 993 F.3d at 1362 ("This circuit's first published opinion to interpret § 1997e(e) was *Harris*").

11. *Harris*, 190 F.3d at 1283.

12. *Id.* at 1287.

13. Pub. L. 104-134, 110 Stat. 1321, codified as amended at 42 U.S.C. § 1997e.

courts.¹⁴ One provision of the PLRA, section 1997e(e), “Limitation on Recovery,” is of particular note.¹⁵ Until recently, the circuit courts were split in their interpretation of section 1997e(e), disagreeing on whether prisoners could seek punitive damages without showing physical injury.¹⁶ The Eleventh Circuit was the last to assert that section 1997e(e) completely barred punitive damages absent physical injury; however, in *Hoever v. Marks*,¹⁷ the Eleventh Circuit joined its sister circuits, holding that section 1997e(e) does not necessarily bar punitive damages without a showing of physical injury.¹⁸ *Hoever* significantly impacts prisoners and correctional officers in the Eleventh Circuit and, moving forward, will enable inmates to seek punitive damages without a showing of physical injury.

II. FACTUAL BACKGROUND

The events leading up to *Hoever* started in 2013, when Conraad Hoever was incarcerated at the Franklin Correctional Institution in Carrabelle, Florida.¹⁹ In September 2013, proceeding pro se, Hoever

14. *Mitchell v. Farcass*, 112 F.3d 1483, 1488 (11th Cir. 1997) (“After reviewing the statutory framework of the PLRA, this court recently concluded that Congress promulgated the Act to curtail abusive prisoner tort, civil rights and conditions litigation.”).

15. In his concurrence and dissent, Judge Newsom called section 1997e(e) “a tough nut to crack.” *Hoever*, 993 F.3d at 1365 (Newsom, J., concurring in part and dissenting in part).

16. Chief Judge Pryor stated, “[o]ur circuit stands alone in enforcing § 1997e(e) as a complete bar to punitive damages, no matter the substantive claim, in the absence of physical injury.” *Hoever*, 993 F.3d at 1355. *See also* *Carter v. Allen*, 940 F.3d 1233, 1237 (11th Cir. 2019) (Martin, J., dissenting) (“In every other circuit, inmates can seek compensatory damages or punitive damages or both for violations of their First Amendment rights. Not so in the Eleventh Circuit.”).

17. 993 F.3d 1352 (11th Cir. 2021).

18. Notably, in *Davis v. District of Columbia*, the D.C. Circuit concluded that the PLRA limits punitive damages without a showing of physical injury. 158 F.3d 1342, 1348 (D.C. Cir. 1998). However, in *Aref v. Lynch*, the D.C. Circuit recognized an exception to that rule and permitted both compensatory and punitive damages in cases involving a First Amendment violation. 833 F.3d 242, 265–66 (D.C. Cir. 2016) (“It is especially difficult to see how violations of inmates’ First Amendment rights could ever be vindicated, given the unlikelihood of physical harm in that context.”). Thus, the Eleventh Circuit was the only circuit with a complete bar on punitive damages.

19. *Hoever*, 993 F.3d at 1355. In April 2010, Hoever was sentenced to fifteen years imprisonment for lewd and lascivious molestation of a minor. *Hoever v. Jones*, No. 14-62096-CIV, 2015 U.S. Dist. LEXIS 194899, *1 (S.D. Fla. Sept. 2, 2015), *report and recommendation adopted sub nom.* *Hoever v. United States*, No. 14-62096-CIV, 2015 U.S. Dist. LEXIS 194902 (S.D. Fla. Dec. 9, 2015). Hoever was a math teacher at Blanche Ely High School in Florida. *Doe v. Sch. Bd. of Broward Cty., Fla.*, 604 F.3d 1248, 1250 (11th Cir. 2010). Prior to the sexual harassment of the fifteen-year-old student whose assault

brought a 42 U.S.C. § 1983²⁰ action against four correctional officers, alleging that his constitutional rights had been violated, and that he was a victim of harassment and threats of physical violence.²¹ Hoever's complaint alleged that throughout the summer of 2013, in retaliation for filing grievances and to discourage him from filing more grievances, several correctional officers harassed and threatened him with physical violence and death.²²

The complaint alleged that on June 6, 2013, a correctional officer threatened Hoever and other inmates with confinement or chemical agents if they said anything improper against the officers.²³ Hoever claimed that on June 20, he was threatened by two officers, one of whom stated: "If you keep on writing grievances, I promise you the next 11 years is [*sic*] going to be a heartache for you. You need to stop writing grievances right now or we'll make sure that you stop."²⁴ The complaint also alleged that on July 20, another correctional officer told Hoever never to write a grievance again, then threatened to starve Hoever and spray him with chemicals every day if he continued to file

Hoever was convicted for, Hoever had molested at least two other female students. *Id.* The fifteen-year-old student filed a federal lawsuit against the School Board of Broward County, Florida and the former principal of the school, including a claim that the School Board exhibited "deliberate indifference to known prior harassment by Hoever against female students at Blanche Ely High School." *Id.* at 1250, 1253. Apparently, despite a record of complaints against Hoever, the former principal gave him a "satisfactory" performance evaluation and even recommended that Hoever be retained for the following school year. *Id.* at 1253.

20. 42 U.S.C. § 1983 (2021). Civil rights lawsuits are commonly brought under 42 U.S.C. § 1983, which holds liable any 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." *Id.* Notably, courts have stated the primary purpose of enacting the PLRA was to curtail claims brought by prisoners under section 1983. *Santana v. United States*, 98 F.3d 752, 755 (3d Cir. 1996), *as amended* (Nov. 14, 1996) ("Congress enacted the PLRA primarily to curtail claims brought by prisoners under 42 U.S.C. § 1983 and the Federal Torts Claims Act, most of which concern prison conditions and many of which are routinely dismissed as legally frivolous.").

21. *Hoever*, 933 F.3d at 1355–56.

22. *Hoever v. Carraway*, 815 F. App'x 465, 465–66 (11th Cir. 2020), *reh'g en banc granted, opinion vacated*, 977 F.3d 1203 (11th Cir. 2020), and *on reh'g en banc sub nom. Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (hereinafter *Carraway II*).

23. *Hoever v. Carraway*, No. 4:13-cv549-MW-GRJ, 2015 U.S. Dist. LEXIS 20661, at *2 (N.D. Fla. Feb. 20, 2015), *aff'd*, 815 F. App'x 465 (11th Cir. 2020), *reh'g en banc granted, opinion vacated*, 977 F.3d 1203 (11th Cir. 2020), and *on reh'g en banc sub nom. Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021), and *rev'd and remanded sub nom. Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (hereinafter *Carraway I*).

24. *Carraway II*, 815 F. App'x at 466.

grievances.²⁵ Allegedly, the officer warned Hoever that his next grievance would be a “death sentence”—that the officer was part of a prison gang and that the officer would have other inmates who worked for the gang help kill Hoever.²⁶ Despite these threats, Hoever wrote another grievance to exhaust his remedies under the PLRA, which was forwarded to the inspector’s office, marking the start of his legal battle for retribution.²⁷

Hoever’s complaint alleged claims for violations of his rights under the First Amendment and the Fourteenth Amendment’s Due Process Clause.²⁸ He sought declaratory and injunctive relief, compensatory damages, and punitive damages.²⁹ The district court dismissed Hoever’s due process claim, the claims for declaratory and injunctive relief, and claims against the officers in their official capacities.³⁰ Further, the district court dismissed Hoever’s claims for punitive and compensatory damages as barred by the PLRA, noting that while the PLRA permits nominal damages if the violation of a constitutional right is established, it “prohibit[s] a prisoner from bringing a federal civil action ‘for mental or emotional injury suffered while in custody without a prior showing of physical injury.’”³¹ As Hoever did not sufficiently allege any physical injury connected with his First Amendment claims, only his claim for nominal damages for First Amendment violations proceeded to trial.³²

During a three-day trial, the jury heard testimony about an occasion in which an officer threatened, “[w]e’ve been killing inmates here for a long time and nobody can do a damn thing to us,’ and a threat to ‘take Hoever to confinement and starve him to death’ if he filed additional grievances.”³³ The jury found that Hoever’s First Amendment rights were violated and awarded Hoever one dollar in nominal damages.³⁴ Yes, one dollar.³⁵ The officers appealed the judgment and Hoever cross-appealed, challenging the dismissal of his punitive damages claim.³⁶ The panel for Hoever’s case followed Eleventh Circuit precedent

25. *Carraway I*, 2015 U.S. Dist. LEXIS 20661, at *2.

26. *Id.* at *3.

27. *Id.*

28. *Carraway II*, 815 F. App’x at 466.

29. *Id.*

30. *Hoever*, 933 F.3d at 1356.

31. *Carraway II*, 815 F. App’x at 466 (quoting 42 U.S.C. § 1997e(e)).

32. *Hoever*, 933 F.3d at 1356.

33. *Id.*

34. *Id.*

35. With inflation, that is about \$1.18. U.S. BUREAU OF LABOR STATISTICS, bls.gov/data/inflation_calculator.htm (last visited Jan. 19, 2022).

36. *Hoever*, 933 F.3d at 1356.

that interpreted the PLRA, 42 U.S.C. § 1997e(e),³⁷ as barring punitive damages absent a showing of physical injury; however, the Eleventh Circuit granted rehearing en banc to reconsider whether section 1997e(e) indeed bars punitive damages absent physical injury.³⁸ Ultimately, joining the rest of its sister circuits,³⁹ the Eleventh Circuit Court of Appeals held that the PLRA permits claims for punitive damages absent a showing of physical injury, reversed the district court's dismissal of Hoever's First Amendment punitive damages claim, and remanded the case for further proceedings.⁴⁰

37. 42 U.S.C. § 1997e(e).

38. *Hoever*, 933 F.3d at 1356.

39. *Kuperman v. Wrenn*, 645 F.3d 69, 73, n.5 (1st Cir. 2011) (noting that although the PLRA was not discussed, it would not bar requests for nominal and punitive damages); *Thompson v. Carter*, 284 F.3d 411, 416 (2d Cir. 2002) (concluding that section 1997e(e) “does not restrict a plaintiff’s ability to recover compensatory damages for actual injury, nominal or punitive damages, or injunctive and declaratory relief.”); *Allah v. Al-Hafeez*, 226 F.3d 247, 252 (3d Cir. 2000) (holding that punitive damage claims stemming from violation of First Amendment rights are not barred by section 1997e(e)); *Wilcox v. Brown*, 877 F.3d 161, 170 (4th Cir. 2017) (agreeing that violations of First Amendment rights “entitle a plaintiff to judicial relief wholly aside from any physical, mental, or emotional injury” (internal quotation marks omitted)); *Hutchins v. McDaniels*, 512 F.3d 193, 198 (5th Cir. 2007) (holding that PLRA does not bar nominal or punitive damages in the absence of physical injury if prisoner can successfully prove violation of Fourth Amendment rights); *King v. Zamara*, 788 F.3d 207, 213 (6th Cir. 2015) (“[T]he plain language of [section 1997e(e)] does not bar claims for constitutional injury that do not also involve physical injury”); *Rowe v. Shake*, 196 F.3d 778, 781–82 (7th Cir. 1999) (“A prisoner is entitled to judicial relief for a violation of his First Amendment rights aside from any physical, mental, or emotional injury he may have sustained.”); *Royal v. Kautzky*, 375 F.3d 720, 723 (8th Cir. 2004) (stating that Congress “did not intend section 1997e(e) to bar recovery for all forms of relief” and agreeing that punitive damages are available under the PLRA); *Oliver v. Keller*, 289 F.3d 623, 630 (9th Cir. 2002) (“To the extent that appellant has actionable claims for compensatory, nominal or punitive damages—premised on violations of his Fourteenth Amendment rights, and not on any alleged mental or emotional injuries—we conclude the claims are not barred by section 1997e(e).”); *Searles v. Van Bebbler*, 251 F.3d 869, 880 (10th Cir. 2001) (noting that “punitive damages may be recovered for constitutional violations without a showing of compensable injury.”).

40. *Hoever*, 933 F.3d at 1355–57.

III. LEGAL BACKGROUND

A. *The Prison Litigation Reform Act*

Until the 1960s, mostly due to the “hands-off doctrine,” it was unclear whether prisoners had any constitutional rights.⁴¹ Under the “hands-off doctrine,” judges abstained from considering what rights prisoners had, as it was “not the function of the courts to superintend the treatment and discipline of prisoners in penitentiaries, but only to deliver from imprisonment those who [were] illegally confined.”⁴² However, in the 1960s, prisoners’ rights law developed as numerous lower court cases addressed prisoner petitions.⁴³ Then, in 1974, the United States Supreme Court validated prisoners’ rights, proclaiming that, “[t]here is no iron curtain drawn between the Constitution and the prisons of this country.”⁴⁴ Further, the Supreme Court announced that “[w]hen a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights.”⁴⁵

By the 1990s, the number of prisoner suits had increased considerably. Notably, this “explosion” of prisoners suing has been argued to be a “half-truth”: there may have been an increase in the absolute number of filings by prisoners, but the increase was possibly due to the rapid growth in prison population.⁴⁶ Further, the rate of filings per 1000 inmates actually decreased 17% between 1980 and 1996.⁴⁷ Nonetheless, there were growing concerns regarding the overall rise in prisoner lawsuits—Congress found that the number of complaints filed by prisoners had increased from 6,600 in 1975 to more

41. MICHAEL MUSHLIN, 1 RIGHTS OF PRISONERS § 1:3. THE HANDS-OFF DOCTRINE (5th ed. 2021). See also MICHAEL MUSHLIN, 1 RIGHTS OF PRISONERS § 1:4. THE DEMISE OF THE HANDS-OFF DOCTRINE AND THE BEGINNING OF PRISONERS’ RIGHTS LAW (5th ed. 2021).

42. *Stroud v. Swope*, 187 F.2d 850, 851–52 (9th Cir. 1951).

43. MICHAEL MUSHLIN, 1 RIGHTS OF PRISONERS § 1:4. THE DEMISE OF THE HANDS-OFF DOCTRINE AND THE BEGINNING OF PRISONERS’ RIGHTS LAW (5th ed. 2021).

44. *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974).

45. *Procunier v. Martinez*, 416 U.S. 396, 405–06 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989).

46. James E. Robertson, *Psychological Injury and the Prison Litigation Reform Act: A “Not Exactly,” Equal Protection Analysis*, 37 HARV. J. ON LEGIS. 105, 141–42 (2000).

47. *Id.* (citing JOHN SCALIA, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONER PETITIONS IN THE FEDERAL COURTS, 1980–96 at 5 (1997), available at <https://bjs.ojp.gov/content/pub/pdf/ppfc96.pdf> (reporting that between 1980 and 1996, the number of federal inmates increased from 23,779 to 95,088 and the number of state inmates increased from 295,819 to 1,033,186)).

than 39,000 in 1994.⁴⁸ Reports showed that in 1995 over 25% of civil cases filed in district courts were brought by prisoners.⁴⁹ Thus, as an effort to address this “rise” in prisoner lawsuits and to curtail the increase of prisoner litigation in federal courts, Congress enacted the Prison Litigation Reform Act of 1996.⁵⁰

The PLRA contains several provisions designed to reduce the quantity of prisoner suits, including: a requirement to exhaust all administrative remedies before filing a section 1983 civil rights lawsuit;⁵¹ a restriction on attorney’s fees;⁵² and a requirement for courts to weed out meritless claims.⁵³ Among these provisions is section 1997e(e), which provides: “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.”⁵⁴ This section, in particular, has caused a circuit split and is the subject of *Hoever v. Marks*.

B. Eleventh Circuit’s Prior Interpretation of the PLRA

In 1999, the Eleventh Circuit published its first opinion interpreting section 1997e(e), *Harris v. Garner*, holding that section 1997e(e) barred punitive damages without a showing of physical injury.⁵⁵ The details of *Harris*, recounted with specificity in the Introduction, were harrowing. In *Harris*, officers of the Georgia Department of Corrections, led by Commissioner Wayne Garner, forced prisoners to strip naked, performed body cavity searches in the presence of members of the

48. 141 CONG. REC. S14408-01 (1995) (“These suits can involve such grievances as insufficient storage locker space, a defective haircut by a prison barber, the failure of prison officials to invite a prisoner to a pizza party for a departing prison employee, and yes, being served chunky peanut butter instead of the creamy variety. The list goes on and on.”).

49. *Roller v. Gunn*, 107 F.3d 227, 230 (4th Cir. 1997).

50. *Woodford v. Ngo*, 548 U.S. 81, 84 (2006).

51. 42 U.S.C. § 1997e(a) (2021) (“No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), 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.”).

52. 42 U.S.C. § 1997e(d)(2) (2021) (“If the award of attorney’s fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.”).

53. 42 U.S.C. § 1997e(c)(1) (2021) (“The court shall on its own motion or on the motion of a party dismiss any action . . . 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.”).

54. 42 U.S.C. § 1997e(e).

55. *Harris*, 190 F.3d at 1287–88 (holding that section 1997e(e) did not bar declaratory and injunctive relief but did bar compensatory and punitive damages).

opposite sex, physically harassed inmates, ordered a prisoner to “dry shave,” made inappropriate comments to a prisoner because of his perceived sexual orientation, and ordered an inmate to “tap dance” while naked.⁵⁶ Eleven prisoners brought a civil rights suit for damages and injunctive relief, alleging violations of their Fourth, Eighth and Fourteenth Amendment rights.⁵⁷

After holding that the stated injuries were not sufficient to meet the physical injury requirement of section 1997e(e), the court concluded that the PLRA bars actions for damages, but not for declaratory and injunctive relief.⁵⁸ In a brief paragraph addressing the language of section 1997e(e), the court posited a temporal interpretation of the act.⁵⁹ An action for money damages is the typical remedy for a violation of rights that occurred in the past, so the past tense use of “suffer” indicates that the provision creates a limitation only on a damages remedy; however, declaratory and injunctive relief remain unimpaired by the PLRA, since “the threat of imminent future harm can only be cured by an equitable remedy.”⁶⁰ Thus, the court held section 1997e(e) precludes actions for money damages, such as punitive and compensatory damages, but not actions for declaratory and injunctive relief.⁶¹

Over the next several years, even though the court acknowledged that a circuit split existed regarding the availability of punitive damages under the PLRA, the court continued to follow its precedent that the PLRA bars punitive damages without physical injury.⁶²

C. Overruling Precedent

By the early 2000s, several circuit courts had held that punitive damages could be recovered under section 1997e(e) absent a showing of

56. *Id.* at 1282.

57. *Id.*

58. *Id.* at 1287–88. The court also considered the argument that barring claims not involving physical injury is a denial of due process under the Fifth Amendment and concluded that it does not violate due process. *Id.* at 1289.

59. *Id.* at 1287–88.

60. *Id.* at 1288.

61. *Id.*

62. *Al-Amin v. Smith*, 637 F.3d 1192, 1199, n.9 (11th Cir. 2011), *overruled by* *Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021). The court even noted that “the overall tenor of *Harris* and its progeny, when taken together, unmistakably supports this result.” *Id.* at 1199.

physical injury.⁶³ There was an emerging view that the plain language of section 1997e(e) limits recovery “for mental and emotional injury”; however, nominal and punitive damages should be unaffected, as they seek to remedy a different type of injury.⁶⁴ Notably, courts recognized that making a showing of physical injury a prerequisite for filing any civil rights lawsuits pertaining to mental or emotional injury “would give officials free reign to maliciously and sadistically inflict psychological torture on prisoners, so long as they [took] care not to inflict any physical injury in the process.”⁶⁵ This trend continued until 2017, at which point all circuits except the Eleventh agreed that the PLRA does not necessarily bar punitive damages.⁶⁶

The pressure on the Eleventh Circuit to reconsider its section 1997e(e) interpretation grew. In 2019, in *Carter v. Allen*,⁶⁷ the court of appeals was asked to rehear an appeal en banc to overrule *Al-Amin*. The court of appeals declined to revisit its interpretation of section 1997e(e) for a “practical reason”: even if it did overrule *Al-Amin*, “it would make no difference to Carter or to the judgment against his claim.”⁶⁸ In short, the case was not right for the punitive damages issue. Judge Pryor explained that, though he “might be amenable to reconsidering [the Eleventh Circuit’s] interpretation of section 1997e(e),” since the panel in this case concluded that Carter was not entitled to a new trial, the punitive damages issue was irrelevant.⁶⁹

Notably, in *Carter*, Judge Martin analyzed section 1997e(e) in her dissent and concluded that punitive damages are not completely barred by section 1997e(e) and that the Eleventh Circuit “interpreted the PLRA to withdraw far more remedies from prisoners than Congress required.”⁷⁰ Disagreeing with the Eleventh Circuit’s interpretation of the PLRA, Judge Martin stated, “our precedent leaves inmates with nominal damages as their only remedy for violations of this bedrock constitutional right, no matter how egregious the violation.”⁷¹

63. See cases cited *supra* note 39. See also, *Canell v. Lightner*, 143 F.3d 1210, 1213 (9th Cir. 1998) (“ . . . § 1997e(e) does not apply to First Amendment Claims regardless of the form of relief sought.”).

64. *Calhoun v. DeTella*, 319 F.3d 936, 941 (7th Cir. 2003).

65. *Id.* at 940.

66. See cases cited *supra* note 39.

67. *Carter v. Allen*, 940 F.3d 1233 (11th Cir. 2019).

68. *Id.* at 1234.

69. *Id.* at 1236. Chief Judge Pryor stated that though he was open to revisiting *Al-Amin* and the Eleventh Circuit’s interpretation of the PLRA, he thought it was “imprudent to do so . . . where the issue is as good as moot.” *Id.*

70. *Id.* at 1242 (Martin, J., dissenting).

71. *Id.* at 1237.

Interestingly, Judge Adalberto Jordan and Judge Jill Pryor agreed with Judge William Pryor that Carter's case was not a good one for en banc review; however, in a footnote to the dissent, they agreed with Judge Martin's analysis of the statute and believed that the issues were worthy of reconsideration by the Eleventh Circuit "in an appropriate case."⁷²

Thus, in 2021, the Eleventh Circuit stood alone in enforcing the PLRA as a complete bar to punitive damages absent a showing of physical injury, making the *Hoever* opinion quite significant.⁷³ Analyzing the text, purpose, and title of section 1997e(e), the court ultimately held that the PLRA does not bar punitive damages absent physical injury, and with comradely spirit, marked its union with its sister circuits, citing various circuit cases as supporting sources.

IV. COURT'S RATIONALE

A. *The Majority Opinion – Chief Judge Pryor*

Chief Judge Pryor's majority opinion is divided into two parts: (1) an analysis of why the PLRA permits punitive damages absent a showing of physical injury, and (2) an explanation as to why the Eleventh Circuit's prior interpretation of the PLRA was incorrect.

1. The PLRA Permits Punitive Damages

Beginning with the language of the statute, Chief Judge Pryor concluded that section 1997e(e)'s focus was on actions brought to redress past injuries. The majority determined that the phrase "[f]ederal civil action . . . brought . . . for . . . injury suffered" supported the interpretation that section 1997e(e) addresses civil actions in which plaintiffs seek to obtain redress.⁷⁴ Emphasizing the word "for," Chief Judge Pryor discussed the implications of the word "for" when followed by an object—in this case, a past injury.⁷⁵ The majority noted that the object that follows the word "for" informs what the action in section 1997e(e) is brought to accomplish, concluding that in this context, an action would be brought to redress a past injury.⁷⁶

72. *Id.* at 1237, n.1.

73. *Hoever*, 933 F.3d at 1355.

74. *Id.* at 1357. Chief Judge Pryor defined "civil action" from Black's Law Dictionary and noted that the past tense use of "suffer" demonstrates that the act "constitutes a limitation on a damages remedy only." *Id.* (quoting *Harris*, 190 F.3d at 1288).

75. *Id.* at 1357–58.

76. *Id.* at 1358.

Having determined that actions brought under section 1997e(e) are to redress a past injury, the majority examined limitations addressed within the act, concluding that the act bars compensatory damages. The majority considered the phrase: “brought by a prisoner . . . for mental or emotional injury suffered while in custody.”⁷⁷ As compensatory damages are the only form of relief that redresses past mental or emotional injury, Chief Judge Pryor held that section 1997e(e) bars compensatory damages without a showing of physical injury.⁷⁸ The majority further held that the full phrase also indicates that the text of section 1997e(e) bars claims for compensatory damages stemming from mental or emotional harms.⁷⁹

While the majority understood section 1997e(e) to bar compensatory damages, it concluded that as punitive damages differ from compensatory damages, the act does not bar punitive damages absent physical injury. In his analysis, Chief Judge Pryor paid particular attention to the diverging purposes of compensatory and punitive damages, echoing the analysis of the Seventh Circuit in *Calhoun v. DeTella*.⁸⁰ The majority emphasized that while compensatory damages are intended to compensate plaintiffs for injuries suffered, punitive damages are intended to punish defendants for their willful or malicious conduct and to deter others from similar behavior.⁸¹ Further, while compensatory damages focus on the plaintiff’s injury or loss, punitive damages focus on the character of the defendant’s conduct.⁸² Tying in its analysis of punitive damages with the previous discussion of the word “for,” the majority concluded that “punitive damages are not awarded to a plaintiff ‘for’ compensation of his mental or emotional injury; they are imposed on a defendant ‘for’ deterrence and punishment of his egregious misconduct.”⁸³

Next, the majority focused on the act’s title, concluding that Congress’ title choice also corroborates the interpretation of the PLRA that it was not intended to bar punitive damages. The majority held that section 1997e(e)’s title, “Limitation on Recovery,” strongly supports

77. *Id.*

78. *Id.* (citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003) and *Akouri v. Fla. Dep’t of Transp.*, 408 F.3d 1338, 1345 (11th Cir. 2005)).

79. *Id.*

80. 319 F.3d 936, 942 (7th Cir. 2003). The facts of *Calhoun* are reminiscent of those in *Harris*: an inmate was forced to undress in the presence of guards of the opposite sex, laughed at, ridiculed, and subjected to a search. *Id.* at 938. In *Calhoun*; however, unlike in *Harris*, punitive damages were not barred. *Id.* at 942.

81. *Hoever*, 933 F.3d at 1358–59.

82. *Id.* at 1359.

83. *Id.* at 1360.

its reading of the act—the physical injury requirement is a limitation on recovery, as opposed to a bar on suing, and the text limits prisoners from recovering compensatory damages for mental or emotional injury absent a showing of physical harm.⁸⁴ Analyzing the word “recover” and interpreting it to mean “to get or obtain again,” the majority concluded that while compensatory damages restore plaintiffs to their pre-injury position, punitive damages do not.⁸⁵ This argument further affirmed the interpretation that Congress did not intend the act to bar punitive damages.

Finally, the majority compared nominal and punitive damages. Nominal damages, like punitive damages, are not sought “for” mental or emotional injury—they are “designed to vindicate the deprivation of a plaintiff’s constitutional rights.”⁸⁶ Likewise, punitive damages may also be recovered for constitutional violations absent physical injury.⁸⁷ Thus, the Eleventh Circuit Court of Appeals joined all other circuits in holding that section 1997e(e) does not bar punitive damages without a showing of physical injury.⁸⁸

2. The Eleventh Circuit’s Prior Interpretation was Incorrect

The majority revisited three prior decisions interpreting section 1997e(e) to explain why its previous analysis was incorrect. First, the majority examined *Harris v. Garner*, where it rejected a plaintiff’s argument that the physical injury requirement denied him due process.⁸⁹ Chief Judge Pryor noted that in *Harris*, unlike in the present case, the court failed to use a textualist approach to interpret the phrase “action . . . brought . . . for mental or emotional injury suffered.”⁹⁰ Further, in *Harris*, the court focused on the act’s reference to “physical injury” and did not consider how the phrase “for mental or emotional injury” qualifies the scope of section 1997e(e)’s limitation on recovery.⁹¹ By not considering the “for” phrase in *Harris*, the court ultimately rendered the phrase “superfluous,” failing to give effect to every word Congress used, thus misinterpreting Congressional intent.⁹² To further his point, Chief Judge Pryor compared section 1997e(e) to 28

84. *Id.*

85. *Id.*

86. *Id.* at 1361 (quoting *Brooks v. Powell*, 800 F.3d 1295, 1308 (11th Cir. 2015)).

87. *Id.* (quoting *Searles v. Van Bebber*, 251 F.3d 869, 880 (10th Cir. 2001)).

88. *Id.* at 1362.

89. *Id.*

90. *Id.*

91. *Id.* at 1362–63.

92. *Id.* at 1363.

U.S.C. § 1915(g),⁹³ which contains a categorical requirement for physical injury, demonstrating that Congress knows how to write a categorical requirement when it wants to do so and chose not to write one in section 1997e(e).⁹⁴

Next, the majority briefly addressed *Napier v. Preslicka*,⁹⁵ where although punitive damages were not specifically discussed, the court nonetheless ruled that the PLRA barred a punitive damages claim.⁹⁶ The majority quickly moved on to *Al-Amin v. Smith*,⁹⁷ where section 1997e(e) was again interpreted as barring punitive damages without a showing of physical injury.⁹⁸ The majority recognized that, “[b]ecause [its] precedents did not grapple meaningfully with the text of § 1997e(e),” and, consequently, “foreclosed an important remedy intended to punish and deter the intentional violation of the rights of prisoners,” the precedents should be overruled.⁹⁹

B. The Concurrence and Dissent in Part – Judge Newsom

Disagreeing with the majority on how to read the phrase “civil action . . . brought . . . for mental or emotional injury suffered while in custody,” Judge Newsom argued that section 1997e(e) does not distinguish between different forms of monetary relief, only between different forms of harm.¹⁰⁰ Particularly for Judge Newsom, the relevant question focused on the type of injury—specifically, whether a prisoner’s action concerns “mental or emotional injury.”¹⁰¹ He maintained that section 1997e(e) precludes prisoners from recovering either compensatory or punitive damages without a showing of physical injury; however, injuries that are not “mental or emotional” permit a prisoner to seek both compensatory and punitive damages.¹⁰² Judge Newsom divided his opinion into three parts: (1) an analysis of why

93. 28 U.S.C. § 1915(g) (1996) (barring in forma pauperis actions brought by prisoners with three strikes “unless the prisoner is under imminent danger of serious physical injury.”).

94. *Hoever*, 933 F.3d at 1363.

95. 314 F.3d 528 (11th Cir. 2002).

96. *Hoever*, 933 F.3d at 1363.

97. 637 F.3d 1192 (11th Cir. 2011).

98. *Hoever*, 933 F.3d at 1363.

99. *Id.* at 1363–64.

100. *Id.* at 1364 (Newsom, J., concurring in part and dissenting in part).

101. *Id.* Notably, the majority took issue with Judge Newsom’s use of the word “concerns,” as opposed to “for,” stating that, “[a] ‘civil action . . . brought . . . for mental or emotional injury suffered’ is an action brought for the purpose of remedying that injury, not an action that merely ‘concerns’ the injury.” *Id.* at 1360–61 (majority opinion).

102. *Id.* (Newsom, J., concurring in part and dissenting in part).

section 1997e(e) bars actions for mental or emotional injury without a showing of physical injury, (2) a discussion about Hoever's "constitutional injury" argument, and (3) final thoughts on how he would rule.

1. The PLRA Bars Actions "Concerning" Mental or Emotional Injury

Picking apart the majority's analysis, Judge Newsom engaged in a semantic battle to ultimately conclude that the PLRA does bar punitive damages. First, Judge Newsom disagreed with the majority's understanding of the word "for" within the act.¹⁰³ He argued that the majority's definition was an "awkward fit," and that a better option is to interpret section 1997e(e)'s use of "for" to mean "concerning" or "with respect to."¹⁰⁴ He asserted that this explanation of the word "for" yields "natural and expected results" and, in fact, was how the court interpreted the word previously.¹⁰⁵ Concluding his discussion on the word "for," Judge Newsom asserted that section 1997e(e) should be understood as: "If an inmate brings suit about—concerning—a mental or emotional injury that he claims to have suffered while in custody, but without showing any accompanying physical injury, his action is barred."¹⁰⁶

Next, Judge Newsom disagreed with the majority's conclusion that punitive damages differ from compensatory damages. While he agreed that "civil action" is a means of obtaining redress and that the past-tense use of the word "suffer" indicates a request for damages, Judge Newsom objected to majority's suggestion that an action seeking punitive damages is not a "civil action."¹⁰⁷ Further, Judge Newsom disagreed with the majority's assertion that section 1997e(e)'s physical injury requirement applies to compensatory damages, but not to

103. *Id.* at 1366. Judge Newsom noted that while the majority relied on the Oxford English Dictionary's definition of the word "for," the dictionary includes seventy-six definitions of the word. *Id.* This does not seem like a successful argument for his point, as the same could be said regarding his selected definition—why, out of all the definitions of "for," does he believe that his definition is better, especially when his definition leads to the opposite conclusion that the rest of the circuit courts have reached regarding the PLRA?

104. *Id.* Judge Newsom also asserted that the majority's interpretation of the word "for" leads to an "absurdity." *Id.*

105. *Id.* at 1366–67. Judge Newsom argued that the previous interpretation of the word "for" was "without apparent controversy." Considering that several other circuits do not interpret the word that way, it seems a far stretch to claim that no "apparent controversy" existed.

106. *Id.* at 1366.

107. *Id.* at 1367.

punitive damages.¹⁰⁸ Primarily, Judge Newsom did not agree with the majority's distinction between punitive and compensatory damages, arguing that both are to remedy harm suffered by the prisoner, thus making the injury the reason both damages would be awarded.¹⁰⁹

Notably, the majority refuted Judge Newsom's argument that punitive damages also "address an injury suffered."¹¹⁰ Chief Judge Pryor took issue with Judge Newsom's justification for this argument, noting that Judge Newsom not only ignored that punitive damages punish defendants for their misconduct, but also cited to a dissenting opinion by Justice Scalia that was not relevant to prisoners or the PLRA.¹¹¹ Further, Chief Judge Pryor emphasized that whether punitive damages are sought in an action brought "for" an injury is a different question than whether punitive damages were received "on account of" an injury.¹¹²

Finally, Judge Newsom disagreed with the majority's section 1997e(e) title analysis, asserting that the majority's conclusion was too narrow: just because punitive damages do not lead to a plaintiff regaining or recovering anything, Judge Newsom argued, does not mean that punitive damages do not fall under a title including "recovery."¹¹³ To support this conclusion, Judge Newsom pointed to several statutes in which Congress referred to plaintiffs "recovering" punitive damages, as well as cases that refer to plaintiffs "recovering" punitive damages.¹¹⁴ Thus, Judge Newsom concluded, a statutory title including the term "recovery" does not necessarily exclude punitive damages and further, the language of section 1997e(e) does not indicate an exclusion of punitive damages.¹¹⁵

In his opinion, Chief Judge Pryor also refuted Judge Newsom's argument regarding the word "recovery." The majority noted that, "[e]ven if courts and statutes are sometimes imprecise in referring to the 'recovery,' instead of the awarding, of punitive damages, it is clear

108. *Id.* at 1367–68.

109. *Id.* at 1368.

110. *Id.* at 1360 (majority opinion).

111. *Id.* Oddly, not only did Judge Newsom extract language from a dissenting opinion to support his argument, but the case itself, *O'Gilvie v. United States*, had nothing to do with prisoners or the PLRA, and the Court ultimately held in *O'Gilvie* that punitive damages are not received "on account of" personal injuries—the opposite point that Judge Newsom is trying to make. 519 U.S. 79, 81 (1996).

112. *Hoever*, 933 F.3d at 1360.

113. *Id.* at 1368 (Newsom, J., concurring in part and dissenting in part).

114. *Id.* at 1368–69 (citing 15 U.S.C. § 1691e(b) (2010); 11 U.S.C. § 362(k)(1) (2020); 17 U.S.C. § 1332(b) (1998)).

115. *Id.* at 1369.

that ‘recovery,’ in this context, refers to compensation because § 1997e(e) concerns an ‘injury suffered.’”¹¹⁶ Further, Chief Judge Pryor questioned how Judge Newsom’s interpretation is not a bar to suing, as opposed to a limitation on recovery or relief, as the title “Limitation on Recovery” indicates.¹¹⁷

2. Hoever’s “Constitutional Injury” Argument Fails

Judge Newsom addressed Hoever’s alternative argument¹¹⁸ that, even if section 1997e(e) bars punitive damages, it does not apply to his First Amendment claims because it does not bar damages for “constitutional injury.”¹¹⁹ While Judge Newsom initially agreed with Hoever’s “constitutional injury” claim, he ultimately concluded that the theory does not work.¹²⁰ He conceded that there are injuries that do not fall into the “physical” or “mental or emotional” categories, such as economic injury, injuries to reputation, and injuries to property, among others.¹²¹ However, as he did not agree with Hoever’s argument that “constitutional injuries” are in a separate category from “mental and emotional injuries,” Judge Newsom concluded that this theory was invalid, and thus Hoever could not recover damages for “constitutional injuries.”¹²²

3. Judge Newsom’s Final Thoughts

Recounting the injuries alleged in Hoever’s complaint— “personal humiliation,’ ‘mental anguish,’ ‘intimidation,’ ‘blemish to his prison record,’ ‘impairment of his reputation,’ ‘defamation,’ and other unspecified ‘irreparable harm’”—Judge Newsom concluded he would hold that section 1997e(e) bars what he believed to be the “mental or emotional injuries” in Hoever’s complaint: personal humiliation, mental

116. *Id.* at 1360 (majority opinion).

117. *Id.* at 1360–61.

118. *Id.* at 1370 (Newsom, J., concurring in part and dissenting in part). The majority opinion did not address Hoever’s argument in the alternative regarding “constitutional injuries,” probably because it was not necessary, as punitive damages without a showing of physical injury were held to not be barred by the PLRA.

119. *Id.* at 1369–70.

120. *Id.* at 1370.

121. *Id.* (quoting THEODORE SEDGWICK, A TREATISE ON THE MEASURE OF DAMAGES § 39, at 45 (9th ed. 1920)).

122. *Id.* at 1371. Then, Judge Newsom analyzed the word “injury” and how it should be understood in the context of statutes. *Id.* at 1371–72.

anguish, and intimidation.¹²³ He believed that a suit alleging injuries based on blemish to prison record, impairment of reputation, and defamation however, would fall outside of section 1997e(e)'s scope, and thus not bar any damages sought.¹²⁴ In conclusion, Judge Newsom would hold that the phrase "civil action . . . brought . . . for mental or emotional injury suffered while in custody" distinguishes between categories of injury, as opposed to categories of damages.¹²⁵ In the majority opinion, Chief Judge Pryor refuted Judge Newsom's arguments and questioned how Judge Newsom divided the categories of injuries when they were all based on the same willful misconduct of the defendant—something that punitive damages are intended to punish.¹²⁶

V. IMPLICATIONS

The decision in *Hoever* marks the Eleventh Circuit's union with all other circuits in recognizing the importance of punishing and deterring the intentional violation of prisoners' First Amendment rights, concluding that section 1997e(e) permits claims for punitive damages without a showing of physical injury.¹²⁷ With this decision, the Eleventh Circuit validates the important right for prisoners to seek punitive remedies for wrongful conduct and, hopefully, will deter future malicious behavior toward prisoners. Although violations of First Amendment rights are rarely accompanied by physical injury, victims of such violations suffer substantial harm and now may be entitled to receive punitive damages.¹²⁸ The consequences of barring punitive damages for constitutional violations are grave, as this would afford

123. *Id.* at 1373. Notably, Judge Newsom gave no explanation as to why he deems personal humiliation, mental anguish, and intimidation as mental or emotional injuries. Is he proposing a test based on the judge's subjective opinion?

124. *Id.*

125. *Id.* at 1374. Judge Newsom's analysis is similar to that in *Aref v. Lynch*; however, in *Aref*, the D.C. Circuit ultimately concluded that prisoners may seek compensatory, punitive, and nominal damages if they assert First Amendment-related complaints. 833 F.3d 242, 263, 267 (D.C. Cir. 2016). Judge Newsom, on the other hand, would interpret section 1997(e) as barring any damages concerning mental or emotional injuries. *Hoever*, 933 F.3d at 1374 (Newsom, J., concurring in part and dissenting in part).

126. *Id.* at 1362 (majority opinion).

127. *Id.* at 1364.

128. Brief for American Civil Liberties Union, American Civil Liberties Union of Georgia, et al. as Amici Curiae Supporting Plaintiff-Cross-Appellant at 1–2, *Hoever v. Marks*, 933 F.3d 1353 (11th Cir. 2021) (No. 17-10792), <https://americansforprosperity.org/wp-content/uploads/2020/12/2020-12-02-Motion-with-attached-Amici-Curiae-Brief.pdf>. (last visited April 13, 2022).

“virtual immunity” for correctional officers to commit such violations, as long as no physical injury is sustained.¹²⁹

The PLRA already contains measures to curtail frivolous lawsuits, so there is no indication that the Eleventh Circuit’s decision to overrule its precedent in *Hoever* would open the floodgates.¹³⁰ Further, this interpretation of the PLRA is more reasonably consistent with congressional intent, considering that the term “punitive damages” does not appear at all in the PLRA or in any draft of the act.¹³¹ As Judge Martin asserted in her dissent in *Carter*, until the Eleventh Circuit reversed *Al-Amin*, it would allow the court to “deny inmates relief that Congress did not intend to preclude.”¹³² In *Hoever*’s en banc reply brief, counsel noted that, “in reams of legislative history spanning 896 pages, the term ‘punitive damages’ comes up exactly once, in passing, buried in an anecdote in an op-ed that happened to be placed into the Congressional Record.”¹³³ With the court’s decision in *Hoever*, the Eleventh Circuit aligns itself with the text of the PLRA and no longer denies remedies from prisoners that Congress never intended to remove.

Going forward, prisoners in the Eleventh Circuit can seek punitive damages for claims such as racial discrimination and psychological torture without having to show physical injury. This remedy should empower victims of such injustices to sue their abusers, holding malicious correctional officers accountable for their behavior and hopefully deterring similar conduct. Perhaps the *Hoever* decision will encourage wardens to implement training programs to educate prison staff on the effects of egregious conduct directed toward inmates. While this potential impact may be wishful thinking, this decision undeniably moves in the right direction to recognizing and validating victims of mental and emotional abuse.

129. *Id.* at 3–4.

130. *Id.* at 5–6 (stating that, “In circuits that have considered the issue, the number of ‘civil rights’ and ‘prison conditions’ cases filed by prisoners continues to fluctuate over time . . . there is no association between a Circuit court’s decision regarding availability of punitive damages for constitutional claims without physical injury and the subsequent number of prisoner lawsuits filed. Simply put, there is no reason to suspect a sudden flood of litigation if this Circuit were to correct course and join the majority of other circuits.”).

131. Cross-Appellant *Hoever*’s En Banc Reply Brief at 3, *Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (No. 17-10792) (citing 141 CONG. REC. S7,527 (1995)).

132. *Carter*, 940 F.3d at 1237 (Martin, J., dissenting).

133. Cross-Appellant *Hoever*’s En Banc Reply Brief at 3.