No. 22-6495

United States Court of Appeals for the Fourth Circuit

WEBSTER DOUGLAS WILLIAMS III,
Appellant,

v.

MICHAEL CARVAJAL,
Appellee.

On Appeal from the United States District Court for the Eastern District of North Carolina

RESPONSE BRIEF OF THE UNITED STATES

MICHAEL F. EASLEY, JR.
United States Attorney

BY: HOLLY P. PRATESI
Special Assistant United States Attorney

150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601
Telephone: (919) 856-4530

Attorney for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Program Statements

STATEMENT OF JURISDICTION

This is an appeal from orders entered by the United States District Court for the Eastern District of North Carolina on March 30, 2021, and March 29, 2022, wherein the district court denied Webster Douglas Williams' ("Williams" or "Appellant") motion for reconsideration, and granted Defendant Michael Carvajal's motion to dismiss Williams' Rehabilitation Act claim. (Joint Appendix [hereinafter "J.A."] 30-42, 88-99). Judgment was entered on March 29, 2022. (J.A. 5).

Williams timely filed a Notice of Appeal on April 25, 2022. (J.A. 197). The Eastern District of North Carolina had jurisdiction over this case pursuant to 28 U.S.C. § 1331. Jurisdiction to this Court is established by 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Whether the district court properly dismissed Williams' Rehabilitation Act Claim because the Prison Litigation Reform Act requires a federal inmate alleging discrimination or retaliation under the Rehabilitation Act to exhaust all administrative remedies available to him, including the applicable Department of Justice's EEO procedures clearly described in publicly accessible federal regulations and Bureau of Prisons program statements.
2. Whether the district court correctly determined that the only proper defendant in a Rehabilitation Act claim is the director of the federal agency alleged to have engaged in the discriminatory or retaliatory conduct.

STATEMENT OF FACTS

Appellant Webster Douglas Williams III is a federal inmate currently serving a 327-month term of imprisonment for Sexual Exploitation of a Minor; Travel with Intent to Engage in Illicit Sexual Contact; and Possession of Child Pornography. (J.A. 46). He is presently incarcerated at the Low Security Correctional Institution in Butner, North Carolina ("LSCI Butner"), and is not projected to release from prison until February 3, 2035. (J.A. 45-46).

Williams' Failure to Obey Staff Directives[1]

On February 28, 2019, at approximately 9:30 a.m., Williams was walking to the restroom in his housing unit when an institutional emergency, or "body alarm," was triggered and declared. (J.A. 10-11, 16). Before Williams entered the restroom, Unit Manager Willis instructed all inmates to return to their housing "cubes" immediately. (J.A. 16). Although Williams admits he heard the Unit Manager's directive, he "failed to address Unit Manager Willis, and proceeded past Unit Manager Willis to his left, into the restroom." (J.A. 16).

Williams proceeded into the "third stall, which was the first stall with a working latch on the stall door," and entered "and latched the stall door." (J.A. 16-17). Unit Manager Willis entered the restroom, knocked on Williams' stall door, and again directed inmate Williams to return to his housing cube. (J.A.

[1] Williams' factual contentions underlying his disability discrimination and/or retaliation claims have not been verified through discovery as his claims were dismissed for failure to exhaust administrative remedies. (J.A. 88-99).

17). By his own admission, inmate Williams again failed to "acknowledge and respond" to the staff member. (J.A. 17).

Only upon exiting the restroom, where Unit Manager Willis asked Williams to explain his failure to obey a directive, did Williams indicate "I take water pills, and I had to use the restroom." (J.A. 17). Williams then returned to his cube. (J.A. 17). The emergency situation was not officially cleared by staff until Williams reached his cube. (J.A. 17).

On March 1, 2019, Williams reported to the Lieutenant's Office, where he was issued an incident report for Refusing to Obey an Order, in violation of Bureau of Prisons ("BOP") disciplinary Code 307. (J.A. 18). That same day, Williams received a Unit Discipline Committee ("UDC") hearing, and he was found to have committed the prohibited act as charged. (J.A. 19). The sanction imposed by the UDC resulted in Williams' loss of phone privileges for one month. (J.A. 12).

Williams' BOP Administrative Appeals

On June 25, 2019, the Warden at LSCI Butner received Williams' appeal challenging the "UDC finding for incident report 3228851, for which [he] was disciplined for refusing to obey an order." (J.A. 78). Williams requested that the incident report be expunged. (J.A. 79). His appeal was denied on July 2, 2019. (J.A. 80).

On July 29, 2019, Williams filed an appeal of the Warden's decision, again seeking expungement of the instant disciplinary action. (J.A. 81-83). On

September 27, 2019, the Regional Director denied Williams' appeal, noting that Williams

> [d]id not provide, nor do we find, any evidence staff capriciously issued the incident report to you as a form of retaliation. Furthermore, you do not provide, nor do we find any evidence, you were incapable of notifying the reporting officer of your medical condition and the possibility you might be unable to control your need to urinate. The incident involved the activation of a body alarm and you were ordered to return to your cell during an emergency. Your willful decision to refuse a direct order is why you were issued the incident report—not your age and medical history. You walked past the reporting officer because you believed your need to urinate was more important than an emergency within your housing unit. For security purposes, inmates are required to obey the orders of staff at all times.

(J.A. 83).

On November 14, 2019, Williams appealed to the BOP's Central Office, wherein he noted that "[f]ailure to remove this [incident report] from my record will result in an ADA lawsuit." (J.A. 84). Ultimately, on January 27, 2020, the National Inmate Appeals Administrator denied Williams' appeal. (J.A. 85).

Following the denial of his Central Office Administrative Remedy Appeal, Williams did not file a complaint with the Department of Justice's Director for Equal Employment Opportunity ("EEO") pursuant to 28 C.F.R. § 39.170. (J.A. 52).

Procedural History

Instead, on May 29, 2020, Williams filed a Complaint in the Eastern District of North Carolina alleging causes of action pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971); 42 U.S.C.

§ 1983; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA"); the Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C. §§ 791(f), 794(a); 42 U.S.C. § 12203(a); and 28 U.S.C. § 1331. (J.A. 6, 88).

On March 30, 2021, the district court conducted an initial review of the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and dismissed all claims except Williams' discrimination and retaliation claims under the Rehabilitation Act. (J.A. 30-42, 89). Specifically, the district court found that Williams "pleaded sufficient facts to survive initial review with respect to his discrimination and retaliation claims, to the extent they are premised on the Rehabilitation Act." (J.A. 35). The district court noted that the "Rehabilitation Act does not permit suits against prison officials in their individual capacities," and therefore, "the only properly named defendant with respect to [Williams'] Rehabilitation Act claim is defendant Carvajal, the FBOP director, in his official capacity." (J.A. 35).[2]

The district court dismissed Williams' ADA claims for failure to state a claim because Title II of the statute does not apply to federal agencies, and individual defendants are not subject to suit under the ADA. (J.A. 35-36). The district court also dispensed with Williams' *Bivens* claims for failure to state a claim because a *Bivens* damages remedy is not available in the context of Williams' retaliation and Fifth Amendment due process claims. (J.A. 36-38).

---

[2] The district court also indicated that "to the extent [Williams] seeks damages against the federal government under the Rehabilitation Act, such remedies are barred by sovereign immunity." (J.A. 35).

On April 9, 2021, Williams filed a motion for reconsideration regarding the district court's March 30, 2021 Order, arguing that any individual defendants dismissed from the lawsuit based on a grant of qualified immunity[3] should be reinstated as defendants. (J.A. 4); (Supplemental Appendix [hereinafter "S.A."] 1-9). In support of his motion, he cited, *inter alia*, BOP Program Statement 5200.06, Management of Inmates with Disabilities. (S.A. 2-3).

On June 21, 2021, Defendant Carvajal filed a motion to dismiss Williams' Rehabilitation Act claim for failure to state a claim, citing Williams' failure to exhaust mandatory administrative remedies—namely the administrative process set forth by 28 C.F.R. § 39.170. (J.A. 5, 43). Defendant Carvajal submitted evidence, in the form of a declaration by a Supervisory Attorney in the BOP's Program Review Division assigned to the Equal Employment Office, that Williams did not file a complaint alleging discrimination in accordance with 28 C.F.R. § 39.170. (J.A. 51-53).

On July 7, 2021, Williams filed a response in opposition to Defendant Carvajal's motion to dismiss. (J.A. 5, 54-57). He included a copy of the Bureau of Prisons Program Statement 1330.18, Administrative Remedy Program, as well as some of the specific administrative remedies he filed with the BOP and responses he received relating to the allegations contained in his complaint. (J.A. 59-85). He principally argued that his complaint should not be dismissed because he was unaware of the requirement to exhaust the EEO procedures and

[3] The district court did not, however, rely on the doctrine of qualified immunity in its March 30, 2021 Order. (J.A. 92).

the BOP's Administrative Remedy Program policy does not mention 28 C.F.R. § 39.170; the Prison Litigation Reform Act ("PLRA") does not state that inmates are required to submit disability complaints to the EEO Director; and the administrative remedy responses he received from the Warden, Regional Director, and National Inmate Appeals Coordinator did not instruct him utilize the EEO process. (J.A. 54-56). He did not, however, argue that these administrative remedies were unavailable to him, that he was unable to locate 28 C.F.R. § 39.170, or that he did not or could not read the full policy P.S. 5200.06, Management of Inmates with Disabilities,[4] which he cited in his Motion for Reconsideration. (J.A. 54-58); (S.A. 2-3).

On March 29, 2022, the district court denied Williams' motion for reconsideration, and granted Defendant Carvajal's motion to dismiss. (J.A. 5, 88-99). The district court emphasized that exhaustion under the PLRA is "mandatory, and the court therefore may not excuse failure to exhaust, even to take special circumstances into account." (J.A. 94). The district court noted that the BOP provides "an additional procedure for exhaustion of administrative

---

[4] Williams cites from Section 4 of this policy, entitled "Staff Training." (S.A. 2). Section 14 of this same policy, entitled "Administrative Remedies," explicitly provides that "[i]nmates may use the procedures of the Program Statement Administrative Remedy Program concerning any issues relating to this policy. **After receiving a response to a BP-11, inmates alleging violations of the Rehabilitation Act must also use additional procedures required by the Department of Justice (DOJ) in order to exhaust available administrative remedies on these issues. The DOJ procedures are found at 28 C.F.R. § 39.170 . . . Inmates should file complaints with the EEO Officer, Central Office**." (S.A. 20-21) (emphasis added).

remedies when an inmate asserts discrimination or retaliation on account of a disability," and explained the comprehensive administrative scheme prescribed by 28 C.F.R. § 39.170. (J.A. 95-96).

The district court specifically held that Williams "has not established that the EEO process is unavailable" under the standards delineated in *Ross v. Blake*, 578 U.S. 632, 642-44 (2016). (J.A. 96). The district court explained that the procedure is not only publicly available, but that it provides "inmates with detailed instructions for filing a complaint and exhausting administrative remedies." (J.A. 97). Ultimately, the district court concluded, that Williams' "failure to investigate the administrative remedy procedure for disability claims does not render the process unavailable to him." (J.A. 97).

In fact, the district court emphasized that not only was the procedure available, but it was "directly relevant to [Williams'] Rehabilitation Act claim where it provides Department of Justice officials with expertise in disability discrimination an opportunity to address [his] claim and order meaningful relief." (J.A. 98). Accordingly, the district court held that the PLRA barred Williams' Rehabilitation Act claim for failure to exhaust his available administrative remedies before filing suit, and the district court dismissed his claim without prejudice. (J.A. 98).

Final judgment was entered on March 29, 2022, and Williams filed a notice of appeal on April 25, 2022. (J.A. 5, 197).

STANDARD OF REVIEW

This Court reviews the district court's factual findings for clear error and its legal conclusions *de novo*. *United States v. Hall*, 664 F.3d 456, 462 (4th Cir. 2012). Specifically, this Court "reviews de novo a district court's dismissal for failure to exhaust available administrative remedies." *Custis v. Davis*, 851 F.3d 358, 361 (4th Cir. 2017); *Talbot v. Lucy Corr. Nursing Home*, 118 F.3d 215, 218 (4th Cir. 1997).

SUMMARY OF ARGUMENT

The district court properly concluded not only that the Prison Litigation Reform Act ("PLRA") requires inmates to exhaust all available administrative remedies, but also properly held that (1) the compliance procedures outlined in 28 C.F.R. § 39.170 are generally available administrative remedies inmates must pursue before filing a complaint pursuant to the Rehabilitation Act, and (2) that Williams' admitted failure to exhaust these mandatory procedures requires dismissal of his claim because these procedures are publicly available and accessible in federal regulations and Bureau of Prisons policy. In light of this holding, this Court need not even reach Williams' third argument. However, even were Williams' Rehabilitation Act claim to survive, the district court properly dismissed all defendants other than the director of the federal agency accused of discriminatory or retaliatory conduct. Accordingly, this Court should affirm the district court's rulings in their entirety.

First, there is simply no ambiguity in the statute or in the Supreme Court's jurisprudence that the PLRA's exhaustion provision is mandatory and inclusive—*all* available administrative remedies must be exhausted before an incarcerated individual can file suit under federal law. There is no express or implied limitation in the statute to a prison's internal grievance procedure. Rather, any available administrative remedy procedure must be complied with by its own terms. The DOJ's EEO process contained in 28 C.F.R. Part 39 is not only available, but tailored specifically to complaints of discrimination and retaliation prohibited by the Rehabilitation Act, and expressly required by an

applicable BOP program statement that Williams himself cites. Accordingly, requiring utilization of this process squarely comports with Congressional intent of the PLRA to reduce the amount of prisoner litigation and improve the quality of those lawsuits filed in compliance with the exhaustion provision. The district court, therefore, properly determined that Williams was required to utilize the DOJ's EEO procedure.

In light of this determination, the district court then properly dismissed Williams' Rehabilitation Act claims for his admitted failure to use, let alone exhaust, the DOJ's EEO procedure. Williams' belated assertion that he was unaware of the process before he filed his lawsuit does not render the process unavailable to him. The federal regulations are publicly available and accessible to inmates using the electronic law library, as are two BOP program statements that reference these regulations and indicate that inmates are required to use the process after exhausting the BOP's administrative remedy program. Williams cited to both the BOP's program statement concerning Management of Inmates with Disabilities and the federal regulations in his own filings, thereby demonstrating their accessibility to him specifically. These policies and regulations were in place before he filed his lawsuit, and no BOP officials engaged in any actions to mislead, intimidate, or otherwise prevent him from submitting a complaint to the EEO official. Therefore, the district court properly rejected Williams' contention that the DOJ EEO process was unavailable to him, and dismissed his Rehabilitation Act claim without prejudice.

As the district court properly determined Williams' failed to exhaust his administrative remedies and the entirety of his lawsuit should be dismissed, this Court need not reach Williams' remaining contention that additional defendants should be reinstated. However, even were this Court to address this meritless claim, it does not warrant reversal of the district court's determination. The district court properly dismissed any and all defendants other than the Director of the Bureau of Prisons. The district court correctly noted that the Rehabilitation Act does not permit suits against prison officials in their individual capacities. Nor does it permit suit against any and all defendants in their official capacities. As the Rehabilitation Act prohibits discrimination and retaliation by an agency, rather than discrete actors, only the head of the agency in his or her official capacity, or the agency itself, is a proper defendant. In any event, even if the district court improperly dismissed additional defendants in their official capacities, any such error is harmless. If Williams' Rehabilitation Act claim were reinstated solely against Defendant Carvajal, he would still be able to pursue any and all relief he would be entitled to under the Rehabilitation Act. Therefore, this Court should affirm the district court's decisions in their entirety.

ARGUMENT

I. The District Court Properly Dismissed Williams' Rehabilitation Act Claim for Failure to Exhaust All Available Administrative Remedies Prior to Filing Suit

A centerpiece of the Prison Litigation Reform Act's ("PLRA") "effort 'to reduce the quantity … of prisoner suits' is an 'invigorated' exhaustion provision." *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (quoting *Porter v. Nussle*, 534 U.S. 516, 524 (2002)). This invigorated provision is abundantly clear: "**No** action shall be brought with respect to prison conditions under . . . **any** [] Federal law, by a prisoner confined in any jail, prison, or other correctional facility **until** such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a) (emphasis added). Exhaustion in cases covered by § 1997e(a) is mandatory, and "all 'available' remedies must … be exhausted; those remedies need not meet federal standards, nor must they be 'plain, speedy, and effective.'" *Porter*, 534 U.S. at 524. This requirement sweeps broadly, too: "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Id.* at 532.

Where a federal prisoner asserts a claim of discrimination or retaliation pursuant to the Rehabilitation Act, there are **two** available administrative remedy procedures he or she must pursue. First, a prisoner must properly file administrative remedies through the Bureau of Prisons' Administrative Remedy Program set forth in Part 542 of Title 28 of the Code of Federal Regulations.

See Bureau of Prisons Program Statement 1330.18, Administrative Remedy Program ("P.S. 1330.18") (J.A. 59-77). Second, upon exhaustion of the BOP process, the prisoner must then submit a complaint to the Director for Equal Employment Opportunity ("EEO") to request redress directly from the Department of Justice in accordance with compliance procedures set forth in Part 39 of Title 28 of the Code of Federal Regulations.

Requiring proper exhaustion of administrative remedies serves several valuable purposes: "[i]t gives prisoners an effective incentive to make full use of the prison grievance process and accordingly provides prisons with a fair opportunity to correct their own errors[,]" it "discourages disregard of [the agency's] procedures[,]" and it promotes efficiency." *Woodford*, 548 at 89-94. Exhaustion is "particularly appropriate where a federal agency can apply its special expertise." *Cooke v. U.S. Bureau of Prisons*, 926 F. Supp. 2d 720, 733 (E.D.N.C. 2013) (citing *McKart v. United States*, 395 U.S. 185, 194 (1969)).

The "purpose of exhaustion is not to create a procedural hurdle on the path to federal [] court, but to channel claims into an appropriate forum, where meritorious claims may be vindicated and unfounded litigation obviated before resort to federal court." *Keeney v. Tamayo-Reyes,* 504 U.S. 1, 10 (1992). Administrative exhaustion also allows claims generally to be "resolved much more quickly and economically." *Woodford*, 548 U.S. at 89. But even "where a controversy survives administrative review, exhaustion of the administrative procedure may produce a useful record for subsequent judicial consideration." *Id.* (citing *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992)).

Although "inmates are not required to specially plead or demonstrate exhaustion in their complaint," there is "no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court." *Jones v. Bock*, 549 U.S. 199, 211, 216 (2007). Proper exhaustion of administrative remedies demands compliance with an agency's deadlines and other critical procedural rules. *Woodford*, 548 U.S. at 90. An inmate must complete all stages of an administrative remedy process before the process is considered properly exhausted. *Id.* at 88–89.

A. The District Court Properly Determined that the Prison Litigation Reform Act Required Williams to Exhaust Both the Bureau of Prisons' Administrative Remedy Program and the Department of Justice's Compliance Procedures Set Forth in 28 C.F.R. § 39.170 Prior to Filing His Rehabilitation Act Claim.

The Bureau of Prisons has a four-tiered Administrative Remedy Program set forth in Part 542 of Title 28 of the Code of Federal Regulations. *See* 28 C.F.R. § 542.10, et seq. An inmate must first attempt resolution of his complaint informally by discussing his concern with a staff member. *See* 28 C.F.R. § 542.13. If the attempt at informal resolution does not provide the inmate with a satisfactory outcome, he may file a formal complaint with the Warden within twenty (20) days of the date on which the basis of the complaint occurred. *Id.* at § 542.14. If the inmate is not satisfied with the Warden's response to his formal grievance, he may appeal the response to the appropriate Regional Director. *Id.* at § 542.15. Finally, if dissatisfied with the regional response, he may file an appeal with the General Counsel at the Bureau of Prisons' Central

Office in Washington, D.C. *Id.* An inmate "must complete all stages of the administrative remedy process before the process is considered properly exhausted." *Gamble v. Onuoha*, No. 5:13-CT-3136-F, 2015 WL 736053, at *3 (E.D.N.C. Feb. 19, 2015) (citing *Woodford*, 548 U.S. at 90-91).

The Department of Justice ("DOJ") also promulgated Part 39 of Title 28 of the Code of Federal Regulations in order to effectuate "section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies . . .." 28 C.F.R. § 39.101. The regulations contained in Part 39 include a section entitled "Compliance Procedures." 28 C.F.R. § 39.170.

Section 39.170 applies "to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency." 28 C.F.R. § 39.170(a). Any person "who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official."[5] 28 C.F.R. § 39.170(d)(1)(i). In addition, "[a]ny person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who

[5] "*Official* or *Responsible Official* means the Director of Equal Employment Opportunity for the Department of Justice or his or her designee." 28 C.F.R. § 39.103.

is a member of that class or the authorized representative of a member of that class may file a complaint with the Official." *Id.*

Critically, these procedures unequivocally apply to inmates incarcerated in BOP facilities, and initially require the inmate to exhaust the grievance procedures outlined within the BOP's administrative scheme. *See id.* at § 39.170(d)(1)(ii) ("Before filing a complaint under this section, an inmate of a Federal penal institution must exhaust the Bureau of Prisons Administrative Remedy Procedure as set forth in 28 C.F.R. part 542."). Following completion of the BOP's administrative remedy procedure, the regulations describe the administrative process in detail. *See generally* 28 C.F.R. Part 39. An inmate must file an EEO complaint within 180 days of completing the administrative remedy program. 28 C.F.R. § 39.170(d)(3). After receiving the complaint, the Responsible Official must complete an investigation, attempt informal resolution, and, if no informal resolution is achieved, issue a letter of findings. *Id.* at § 39.170(g)(1). Should either party be dissatisfied with the result, he or she may appeal to the EEO's complaint adjudication officer within 30 days of receipt of the letter of findings. *Id.* at § 39.170(i)(1). A party may also request a hearing before an administrative law judge. *Id.* at § 39.170(i),(k). The complaint adjudication officer ultimately has 60 days to resolve the appeal, measured either from receipt of the notice of appeal and investigative record, or in the event of a hearing, after the period for filing exceptions ends. *Id.* at § 39.170(l)(1). This administrative process is exhausted only after the Complaint Adjudication Officer issues a final agency decision.

Williams concedes, as he must, that the PLRA's exhaustion requirement applies to claims brought under the Rehabilitation Act. *See Appellant's Brief* at 15, 19; s*ee also* 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions under … **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.") (emphasis added). "[T]he plain language of § 1997e(a) and relevant Supreme Court authority require prisoners bringing ADA and Rehabilitation Act claims to exhaust those claims through available administrative remedies before filing suit." *O'Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1061 (9th Cir. 2007). The Ninth Circuit explained in *O'Guinn* that:

> We recognize that neither Title II of the ADA nor section 504 of the Rehabilitation Act generally requires administrative exhaustion before filing suit. Yet nothing in the ADA or the Rehabilitation Act carves out an exception to the PLRA exhaustion requirement. On the other hand, the PLRA specifically prohibits suits "under section 1983 of this title, or any other Federal law," absent exhaustion. The Supreme Court has noted that in enacting the PLRA, Congress intended it to apply to all federal laws with respect to prisoner suits, with the intent that prison officials would have the first opportunity to address prison conditions. This congressional intent would be defeated if prisoners were able to bring federal suits directly in district court wherever a federal statute lacked an exhaustion provision. Given the clear indication of congressional intent in the PLRA, we interpret § 1997e(a) as requiring prisoners to exhaust prison administrative remedies for claims under Title II of the ADA and the Rehabilitation Act, notwithstanding the absence of a federal administrative exhaustion requirement in these statutes.

O'Guinn, 502 F.3d at 1061-62 (internal citations omitted). Williams does not contest that the PLRA's exhaustion requirement applies, but rather, argues that

he must only administratively exhaust the BOP's administrative remedy process, not the DOJ's EEO process specifically implemented to address complaints of discrimination under the Rehabilitation Act. *See Appellant's Brief* at 19.

Federal district courts within the Fourth Circuit confronted with this question, however, have routinely required exhaustion of both administrative procedures before a prisoner can allege discrimination or retaliation pursuant to the Rehabilitation Act. *See, e.g., Wise v. C. Maruka*, No. 1:20-00056, 2021 WL 1603819, at *11 (S.D.W. Va. Jan. 5, 2021) (report and recommendation adopted by *Wise v. C. Maruka*, 2021 WL 1146002 (S.D.W. Va. Mar. 25, 2021)) (unpublished) ("Before an inmate may seek judicial review of a disability discrimination claim, the inmate must exhaust the DOJ's administrative remedy process as set forth in 28 C.F.R. § 39.170."); *Peppers v. Moubarek*, No. PWG-19-2346, 2020 WL 5759763, at *9 (D. Md. Sept. 25, 2020) (unpublished) (noting that "[a]lthough the United States Court of Appeals for the Fourth Circuit has yet to rule on the precise issue of whether the exhaustion requirement of the PLRA applies to claims brought under the Rehabilitation Act, all circuits to do so have held that it does," and dismissing Rehabilitation Act claims where the prisoner plaintiff failed to exhaust all four tiers of the BOP administrative review process and file a complaint with the EEO Director); *Hopper v. Barr*, No. 5:18-cv-01147, 2019 WL 3938076, at *5-6 (D.S.C. July 31, 2019) (unpublished) (holding that the BOP's EEO process is an available administrative process as set forth in the PLRA, and dismissing a prisoner plaintiff's Rehabilitation Act claim where a review of the record established that the plaintiff failed to exhaust

those available remedies); *Washington v. Fed. Bureau of Prisons*, No. 5:16-cv-03913, 2019 WL 2125246, at *7-8 (D.S.C. Jan. 3, 2019) (unpublished) (same); *Zoukis v. Wilson*, No. 1:14-cv-1041, 2015 WL 4064682, at *9-11 (E.D. Va. July 2, 2015) (unpublished) (Although the DOJ EEO "process itself is not mandatory under DOJ policy, … it 'give[s] corrections officials the opportunity to address claims that they are not complying with the Rehabilitation Act before being forced to litigate the matter in federal court. As the PLRA was passed for this very purpose—to give prison officials a chance to review claims before the filing of a lawsuit—the process is mandatory for prisoners under the PLRA").

Other districts around the country also require exhaustion of both procedures. *See, e.g., Barrett v. Fed. Bureau of Prisons*, No. 19-cv-3250, 2022 WL 93504, at *4 (N.D. Ill. Jan. 10, 2022) (unpublished) ("Different regulations have different exhaustion regimes. … [Plaintiff] is a federal prisoner, so the BOP's grievance process applies. And he brings a claim about discrimination by the DOJ, so the DOJ's complaint process applies, too. [Plaintiff] falls within the scope of each administrative process, so he needed to complete both of them before filing suit. … A federal prisoner bringing a discrimination claim under the Rehabilitation Act must complete not one, but two processes to exhaust his available remedies. It's not one and done."); *Turner v. Langford*, No. 17-03146, 2018 WL 8050530, at *7 (C.D. Cal. Sept. 21, 2018) (unpublished) ("The plain language of [28 C.F.R. § 39.170(d)(1)(i)] states that 'any person who believes that he or she has been subjected to discrimination prohibited by this part may . . . file a complaint with the [Responsible Official.]' The regulation itself does

not mandate utilizing the DOJ administrative process. But the PLRA mandates exhaustion of all available administrative remedies. Because the DOJ administrative process was 'available' to Plaintiff, he was required to exhaust this process before filing suit for his Rehabilitation Act claim.") (internal citations omitted)[6]; *Elliott v. Wilson*, No. 0:15-cv-01908, 2017 WL 1185213, at *14 (D. Minn. Jan. 17. 2017) (unpublished) ("Claims raised under the Rehabilitation Act must be presented to the BOP through yet another procedure in order to satisfy the exhaustion requirement of § 1997e(a). This procedure requires that the prisoner first exhaust the usual BOP administrative remedy process . . . and, after that process has been completed, to submit a complaint to the Director for Equal Employment Opportunity.") (internal citations omitted); *Seina v. Center-Honolulu*, No. 16-00051, 2016 WL 6775633, at *5 (D. Haw. Nov. 15, 2016) (unpublished) ("If a federal inmate remains unsatisfied after completing the BOP's administrative remedy process, he or she must utilize the DOJ administrative procedure before initiating suit under the Rehabilitation Act."); *Haley v. Haynes*, No. 210-122, 2012 WL 112946 (S.D. Ga. Sept. 14, 2012) (unpublished); *Brown v. Cantrell*, No. 11-cv-00200, 2012 WL 4050300, at *3 (D. Colo. Sept. 14, 2012) (unpublished) ("The Court concludes that the PLRA's requirement that plaintiff exhaust all 'available' remedies requires federal inmates alleging disability discrimination to take advantage of § 39.170, which

[6] This case also demonstrates the insignificance of Williams' argument that the "EEO process is a voluntary alternative to litigation, even for incarcerated plaintiffs." *Appellant's Brief* at 30. The process may be voluntary for non-incarcerated individuals, but for prisoners, the PLRA's mandate controls.

is 'available.' … [T]he Court finds that the PLRA's clear textual mandate should control this issue."); *William G. v. Pataki*, No. 30-cv-8331, 2005 WL 1949509, at *4 (S.D.N.Y. Aug. 12, 2005) (unpublished) ("The text of the PLRA does not limit available administrative remedies to those that are internal to the prison system in which a plaintiff is confined. … 'It is not limited to administrative redress within the prison system in which the prisoner is being held, or to administrative remedies provided by any particular sovereign.' The DOJ remedies, to the extent that they are available to Plaintiffs, must be exhausted pursuant to the plain language of the PLRA.") (internal citations omitted).

This Court, too, should require an incarcerated plaintiff to pursue and exhaust available administrative remedies prescribed by not only the BOP's Administrative Remedy Program, but also by the DOJ's EEO process, prior to filing a lawsuit in federal court. The Supreme Court has made abundantly clear that exhaustion of administrative remedies is mandatory—whether the administrative process can afford the inmate the relief he or she might obtain through civil proceedings or not, whether the subject of the grievance involves general circumstances or particular episodes, whether the inmate alleges excessive force or some other wrong, whether the inmate seeks monetary damages, injunctive relief, or some other remedy, and whether there are special circumstances or not. *See generally Woodford*, 548 U.S. 81; *Booth v. Churner*, 532 U.S. 731 (2001); *Porter*, 534 U.S. 516; *Ross*, 578 U.S. 632. The **sole** exception to

the PLRA's exhaustion requirement is that only "available" administrative remedies must be exhausted. *Ross*, 578 U.S. at 636.[7]

Williams' suggestion that the Supreme Court posed further limitations on the administrative exhaustion requirement is clearly inaccurate. *See Appellant's Brief* at 20. In *Jones v. Bock*, the Supreme Court confronted three specific questions: (1) whether exhaustion of administrative remedies is a pleading requirement or an affirmative defense; (2) what level of detail an inmate must include in his administrative remedies—i.e., whether each potential defendant must be named in a remedy submission; and (3) whether the presence of both exhausted and unexhausted claims requires dismissal of the entire complaint, or only those unexhausted claims. 549 U.S. at 204-05. The Supreme Court did **not** consider exactly which remedies are available to inmates in a specific context. Rather, the Supreme Court emphasized that the proper exhaustion requirement set forth in *Woodford* is delineated by each available administrative remedy procedure itself, not directly by the PLRA:

> In *Woodford*, we held that to properly exhaust administrative remedies prisoners must 'complete the administrative review process in accordance with the applicable procedural rules—rules

[7] As discussed further in Section B below, the Supreme Court has set forth only three scenarios where an administrative process may be considered unavailable: (1) the process "operates as a simple dead end-with officers unable or consistently unwilling to provide any relief to aggrieved inmates;" (2) the process is so opaque that no ordinary prisoner can discern or navigate through the process; and (3) the administrators "thwart inmates from taking advantage of a grievance through machination, misrepresentation, or intimidation." *Ross*, 578 U.S. at 643-44. None of those scenarios applies here.

> that are defined not by the PLRA, but by the prison grievance process itself. Compliance with prison grievance procedures, therefore, is all that is required by the PLRA to 'properly exhaust.' The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion.

Jones, 549 U.S. at 218. Williams misinterprets the Court's holding. The Court is merely explaining that each available process—here, the BOP's Administrative Remedy program and the procedures outlined in 28 C.F.R. Part 39—dictates the respective requisite time to file a complaint, the level of detail required, and any other procedural rules an inmate must follow to complete the process.[8] The Court did not expressly state or imply that additional procedures could be ignored upon completion of a particular prison system's remedies so long as these additional procedures remain available. The PLRA itself only refers to "available" administrative remedies, and does not specify who must create the administrative processes—the prison system, the state government, or the federal government. *See* 42 U.S.C. § 1997e(a). Accordingly, there is no statutory

[8] Similarly, in *Moore*, the Fourth Circuit merely affirmed the Supreme Court's holding in *Jones* that an inmate need only follow the procedural rules set forth by an individual grievance process. *Moore v. Bennette*, 517 F.3d 717, 726 (4th Cir. 2008) ("The ARP requires only that a grievance be submitted on a Form DC-410, which does not require identification of the persons responsible for the challenged conduct. We therefore vacate the dismissal of the pancreas claim."). The Fourth Circuit did not, however, in any way, opine as to whether an inmate must exhaust the procedures set forth in 28 C.F.R. § 39.170 because the case concerned a state inmate who sought relief under 42 U.S.C. § 1983 for alleged deliberate indifference to his medical needs. *Id.*

or judicially imposed limitation of "available" remedies to only a prison's internal grievance procedure.

The broad requirement that inmates must exhaust **all** available administrative remedies before filing suit serves the purposes of administrative exhaustion. Williams' assertions to the contrary are flawed. The EEO process set forth by 28 C.F.R. § 39.170 gives "an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court." *See Appellant's Brief* at 20; *Woodford*, 548 U.S. at 89. The Responsible Official must conduct an investigation, may require agency employees to cooperate in the investigation, provides the complainant a copy of the investigation, and may attempt informal resolution. 28 C.F.R. § 39.170(f)-(g). If the complainant is unsatisfied, he may appeal and request relief from a Complaint Adjudication Officer, who may hold a formal hearing if necessary. *Id.* at § 39.170(i)-(k). Ultimately, when the final agency decision is rendered, it may require the respondent—in this case, the BOP—to take remedial action. *Id.* at § 39.170(l). Thus, the procedures set forth by Part 39 give an agency its best opportunity to correct its own mistakes. *See Woodford*, 548 U.S. at 89.

Requiring exhaustion of both available remedy procedures further comports with Congressional intent to ensure "that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the

allegations with merit." *Jones*, 549 U.S. at 202.[9] The DOJ's administrative process **can** resolve claims "much more quickly and economically in proceedings before an agency than in litigation in federal court. In some cases, claims are settled at the administrative level, and in others, the proceedings before the agency convince the losing party not to pursue the matter in federal court. 'And even where a controversy survives administrative review, exhaustion of the administrative procedure may produce a useful record for subsequent judicial consideration.'" *Woodford*, 548 U.S. at 89 (internal citations omitted). The EEO process may provide a prisoner complainant with precisely the relief he seeks, therefore obviating the need to proceed to federal court, or it may narrow the issues and/or develop a factual record which can be used by the federal district court to finally resolve any outstanding Rehabilitation Act claims. *See* 28 C.F.R. § 39.170. This process is specifically designed to address complaints about

[9] Williams' reliance on *Rumbles*' explanation of Congressional intent is misplaced. First, *Rumbles* stands for the proposition that a state inmate is not required to pursue California Tort Claims Act procedures prior to bringing suit under 42 U.S.C § 1983. *See Rumbles v. Hill*, 182 F.3d 1064, 1070 (9th Cir. 1999). There is nothing groundbreaking in this holding: federal inmates pursuing a *Bivens* claim, for example, need not submit an SF-95 form in compliance with the Federal Tort Claims Act where they are not seeking relief pursuant to that statute. Additionally, this holding in no way suggests that federal regulations governing the Department of Justice, of which the Bureau of Prisons is a component agency, are somehow external to, or would be unavailable to, federal inmates seeking redress. The regulations specifically contemplate that a federal inmate may seek to use those procedures. *See* 28 C.F.R. § 39.170(d)(1)(ii). In fact, the Ninth Circuit, eight years later, held that "the plain language of § 1997e(a) and relevant Supreme Court authority require prisoners bringing ADA and Rehabilitation Act claims to exhaust those claims through available administrative remedies before filing suit." *O'Guinn*, 502 F.3d at 1061.

discrimination under the Rehabilitation Act, and the agency has "particular expertise with respect to the Rehabilitation Act," whereas the individuals responding to a general inmate complaint through the BOP's administrative remedy program may not. *See Cooke*, 926 F.Supp.2d at 732. As noted above, the "purpose of exhaustion is not to create a procedural hurdle on the path to federal [] court, but to channel claims into an appropriate forum, where meritorious claims may be vindicated and unfounded litigation obviated before resort to federal court." *Keeney,* 504 U.S. at 10.[10]

This Court should uphold the district court's dismissal of Williams' Rehabilitation Act claims for failure to exhaust available administrative remedies. As the district court noted, the EEO procedure is "directly relevant to plaintiff's Rehabilitation Act claim where it provides Department of Justice Officials with expertise in disability discrimination an opportunity to address plaintiff's claim and order meaningful relief." (J.A. 98). It is irrelevant that the regulation itself does not require disabled persons to file a complaint because

[10] Nor would requiring exhaustion of the DOJ EEO procedures frustrate or impede an inmate's access to the courts, and Williams' assertion to the contrary is baseless. *See Appellant's Brief* at 34. An inmate may still seek other forms of judicial relief after exhausting the BOP's administrative remedy process—something Williams, in fact, did. He simply may not seek redress for claims specific to the Rehabilitation Act without first presenting them to those in the agency with expertise specifically related to preventing unlawful discrimination. In any event, first presenting his complaints to the DOJ official can provide more *meaningful* access to the courts because any claims to survive the administrative process will be factually developed and accompanied by an investigative record which could be helpful to the reviewing court.

"the PLRA requires federal inmates to exhaust **all** 'available' administrative remedies." (J.A. 98) (emphasis added).

B. The District Court Properly Determined that the DOJ's EEO Process was Available to Williams Because it is Contained in Publicly Accessible Federal Regulations and Bureau of Prisons' Policy.

The record also clearly reflects that both administrative procedures were available to Williams. The PLRA's mandatory language regarding exhaustion "means a court may not excuse failure to exhaust, even to take [special] circumstances into account." *Ross*, 578 U.S. at 639. The PLRA only contains one narrow exception: an inmate "must exhaust available administrative remedies, but need not exhaust unavailable ones." *Id.* at 642. The "ordinary meaning of the word 'available' is 'capable of use for the accomplishment of a purpose,' and that which 'is accessible or may be obtained.'" *Id.* Thus, there are only three circumstances where a prison administrative remedy procedure may be considered unavailable: (1) when "it operates as a simple dead end;" (2) the "scheme is so opaque that it becomes, practically speaking, incapable of use;" and (3) "when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id.* at 643-44.

An administrative remedy operates as a simple dead end where "the relevant administrative procedure lacks authority to provide any relief," and therefore, "the inmate has 'nothing to exhaust.'" *Id.* at 643 (internal citations omitted). "So too if administrative officials have apparent authority, but decline ever to exercise it." *Id.* An administrative remedy scheme is too opaque to be available where "some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it." *Id.* at 644. A remedy, therefore, is essentially "unknowable" where "no ordinary prisoner can make sense of what it demands." *Id.*[11] Finally, prison administrators may not mislead or threaten inmates to prevent their use of a remedy procedure. *Id.*

Several district courts have found the DOJ EEO process to be available and dismissed inmate Rehabilitation Act claims for failure to exhaust

---

[11] Accordingly, "unknowable" refers to whether a remedy scheme is complicated and confusing, not whether an inmate is generally aware of its existence. *See id.* Williams' reliance on *King v. McCarty* is therefore misplaced. In *King*, the Seventh Circuit's statement that prisoners "are not required to divine the availability of other procedures" refers to the machinations of individual procedures, not their existence. 781 F.3d 889, 896 (7th Cir. 2015), *overruled on other grounds by Henry v. Hulett*, 969 F.3d 769 (7th Cir. 2020) (en banc). In *King*, the Seventh Circuit held only that an administrative remedy was unavailable where an inmate was transferred to a different correctional authority, and the jail grievance procedure did not provide for a mechanism to raise concerns about the transfer procedure following departure. *See generally id.* The Seventh Circuit explained that the jail could not retroactively state that it would have accepted a late grievance by mail, and therefore found the procedure, as applied, to be unavailable. *See generally id.*

administrative remedies even where an inmate did not know of the procedure before filing suit. *See Barrett*, 2022 WL 93504, at *9; *see also, Seina*, 2016 WL 6775633, at *5-6; *Haley*, 2012 WL 112946, at *1 (rejecting *amici's* contention that inmates have "no way to discover 28 C.F.R. § 39.170 and its attendant requirement for administrative procedures," and explaining instead that it "has been this Court's experience that inmates have a keen regard for their rights and a fairly firm grasp of the law. Finally, and equally without merit, is the assertion that requiring an inmate with a disability to exhaust additional remedies is a violation of the [Rehabilitation Act]. Requiring that an inmate seeking relief based on alleged violations of the ADA and [Rehabilitation Act] in correctional facilities file an administrative complaint with the Department of Justice is not a burden—it is only a procedural step which must occur before bringing a cause of action in federal court").

In *Barrett*, the district court persuasively explains:

> The point is simply that the prison cannot hide the ball, move the goalposts, or otherwise mislead prisoners about the rules of the game. "If authorities could change their grievance rules once litigation began or simply keep prisoners in the dark about the real rules, they could always defeat prisoner suits by announcing impossible procedural hurdles beforehand and then, when they are sued, explaining that they would have waived the requirements for the plaintiff." That is, the PLRA "was not meant to impose the rule of 'heads we win, tails you lose.'"
>
> There's no suggestion in the record that any such mischief took place here. The DOJ did not impose the policy midstream. There's

> no shell game, or bait and switch. And there is no suggestion in the record that the BOP misled Barrett, by telling him that the BOP's grievance procedure was the only game in town.
>
> [An inmate] is not exempt from the DOJ administrative remedies, simply because he didn't know about it until the government filed its motion. Absent "affirmative misconduct on the part of the jail to prevent [an innate] [sic] from learning about and pursuing the grievance procedure," the inmate bears "the responsibility of taking the appropriate steps to comply with the proper procedure." "A prisoner's lack of awareness of a grievance procedure, however, does not excuse compliance."
>
> . . .
>
> The BOP also did not leave inmates in the dark about how to pursue discrimination claims. The BOP issued a Program Statement that makes clear what inmates need to do. "[I]nmates alleging violations of the Rehabilitation Act must also use additional procedures required by the Department of Justice (DOJ) in order to exhaust available administrative remedies on these issues. The DOJ procedures are found at 28 C.F.R. § 39.170." That Program Statement is available to inmates through the Electronic Law Library.

Barrett, 2022 WL 93504, at *9 (internal citations omitted).

Here, Williams does not assert—nor can he—that the EEO administrative process operates as a simple dead end, or that it is so opaque that it is practically incapable of use. His sole argument is that he was not aware of the DOJ's EEO process prior to filing suit. He asserts he is blameless for his lack of awareness because the BOP's Administrative Remedy Program policy does not mention

the DOJ's EEO process, and BOP officials did not otherwise refer him to it. *See Appellant's Brief* at 41-42. Both arguments lack merit.[12]

First, there is no evidence in the record that Williams ever asked staff about any additional administrative remedies that may be available, and was deceived or misled. At most, Williams makes vague and sporadic references to the Americans with Disabilities Act in his administrative remedy appeals, but does not specifically mention the Rehabilitation Act. (J.A. 79, 82, 84). Nor has he alleged or produced evidence that any BOP staff took affirmative action to prevent him from discovering or utilizing the DOJ EEO process.

Second, and more importantly, the mere fact that the BOP's Administrative Remedy Program policy does not refer to the DOJ's EEO

---

[12] So too, does Williams' argument that the district court impermissibly shifted the burden of proof. *See Appellant's Brief* at 36-37. In *Jones*, the Supreme Court held that "failure to exhaust is an affirmative defense under the PLRA, and that inmates are not required to specially plead or demonstrate exhaustion in their complaints." 549 U.S. at 217. The district court did not impermissibly require Williams to demonstrate exhaustion in his complaint—in fact, the district court permitted his Rehabilitation Act claim to proceed following initial screening. (J.A. 34-35). In Defendant's motion to dismiss, he argued that there is a generally available administrative remedy procedure—the DOJ's EEO process—and submitted uncontroverted evidence that Williams did not pursue it. (J.A. 45-53). Williams was permitted an opportunity to respond to Defendant's affirmative defense, and did so. (J.A. 54-58). That is all that is required in this Circuit. *See Moore*, 517 F.3d at 725 ("a complaint may be dismissed on exhaustion grounds so long as the inmate is first given an opportunity to address the issue."); *Custis v. Davis*, 851 F.3d 358, 362 (4th Cir. 2017). The district court was permitted to evaluate the evidence submitted by both parties as to whether the DOJ EEO process was available to Williams under the circumstances of his case, and properly determined that it was.

process does not constitute impermissible "hid[ing] the ball, mov[ing] the goalposts, or otherwise mislead[ing] prisoners about the rules of the game." *See Barrett,* 2022 WL 93504, at *9. The BOP's administrative remedy program's stated purpose is "to allow an inmate to seek formal review of an issue relating to **any** aspect of his/her own confinement." (J.A. 59); 28 C.F.R. § 542.10. It serves as means for inmates to seek relief or redress directly from the BOP, not as guidance to inmates seeking to file federal lawsuits. Nor is it intended to identify any and all additional administrative processes that may exist within federal regulations.

Rather, the BOP has promulgated an entire program statement dedicated exclusively to management of inmates with disabilities. *See* Bureau of Prisons Program Statement ("P.S.") 5200.06, Management of Inmates with Disabilities (Nov. 22, 2019) (S.A. 10-25).[13] The purpose of this policy is to "ensure the Bureau of Prisons (Bureau) properly identifies, tracks, and provides services to inmates with disabilities." (S.A. 10). In this policy, the BOP acknowledges its duty to ensure inmates with disabilities are not "denied access to programs and services solely based on the presence or suspected presence of a disability. When a disability creates barriers for an inmate's program participation, Bureau staff will modify the program to the extent possible … while maintaining program integrity, or provide an appropriate accommodation … unless an undue burden

[13] This Program Statement is also publicly available at https://www.bop.gov/policy/progstat/5200_06.pdf.

exists." (S.A. 18). At the end of this policy, there is a section dedicated to "Administrative Remedies," that provides:

> Inmates may use the procedures of the Program Statement Administrative Remedy Program concerning any issues relating to this policy. **After receiving a response to a BP-11, inmates alleging violations of the Rehabilitation Act must also use additional procedures required by the Department of Justice (DOJ) in order to exhaust available administrative remedies on these issues. The DOJ procedures are found at 28 C.F.R. § 39.170.**
>
> The Equal Employment Opportunity (EEO) Officer, Central Office, has been designated by DOJ and Bureau as the "Responsible Official" or "Official" as used in these regulations. Inmates should file complaints with the EEO Officer, Central Office. All complaints should be sent to the Bureau's EEO Office, and include copies of the administrative remedies and responses received. (i.e., BP-9, BP-10, and BP-11).
>
> Any costs incurred from the administrative process will be paid from the budget of the institution where the claim arose

(S.A. 20-21) (emphasis added). In addition, publicly available BOP Program Statement 3713.24, Discrimination and Retaliation Complaints Processing (June 16, 2014) describes the DOJ's compliance procedures found at 28 C.F.R. § 39.170, including notice that "inmates who allege disability discrimination by the Bureau must first exhaust the Bureau's Administrative Remedy Procedure as set forth in 28 C.F.R. 39.170(d)(1)(ii)." (J.A. 178-79).

As the district court noted, Williams has access to legal research materials and "could have determined from these publicly available sources that the EEO process was required before filing this action. His failure to investigate the

administrative remedy procedure for disability claims does not render the process unavailable to him." (J.A. 97).

Williams' claim that the record fails to show he had access to these materials is mistaken. The district court entered its screening order on March 30, 2021, wherein the district court dismissed Williams' ADA claims and constitutional claims, but permitted his Rehabilitation Act claims to proceed. (J.A. 30-42). On April 9, 2021—two months before the Defendant's motion to dismiss—Williams filed Objections to Order ECF #18. (S.A. 1-9). Throughout his objections, Williams cites to legal authority to support his position. (S.A. 1-9). Critically, Williams affirmatively cites to BOP Program Statement 5200.06, Management of Inmates with Disabilities. (S.A. 2). Therefore, he cannot credibly argue that the program statement detailing the requirement to utilize the DOJ's EEO process was unavailable to him when he specifically cites to the policy he now claims was "unknowable." Additionally, in his Opposition to the Defendant's Motion to Dismiss, Williams cites to the DOJ Regulations at 28 C.F.R. § 39.170, further belying his assertions that he does not and could not have access to these materials as a *pro se* litigant. (J.A. 55). Williams has demonstrated "a keen regard for [his] rights and a fairly firm grasp of the law," and cannot now feign ignorance to defeat the PLRA's mandatory exhaustion requirement. *See Haley*, 2012 WL 112946, at *1.

Accordingly, the DOJ EEO process was available to Williams, and his concession that he failed to utilize the procedure prior to filing suit is fatal to his claim. (J.A. 54). This Court should affirm the district court's finding that the

DOJ EEO process was available to Williams because it was publicly available, and his "failure to investigate the administrative remedy procedure for disability claims does not render the process unavailable to him." (J.A. 97).

II. The District Court Correctly Determined that the Director of the Federal Bureau of Prisons is the Only Proper Defendant in a Rehabilitation Act Claim Where the Alleged Discriminatory Acts Transpired in a Federal Correctional Facility.

As the district court properly dismissed Williams's sole remaining claim under the Rehabilitation Act in its March 29, 2022 Order for failure to exhaust administrative remedies, this Court need not consider whether the district court properly dismissed any additional defendants.[14] However, even if this Court were to reinstate Williams' Rehabilitation Act claim, it need not reinstate any additional defendants. Defendant Carvajal, named in his official capacity, is the sole properly named defendant in Williams' complaint pertinent to his Rehabilitation Act Claims.

Federal law requires that "no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity . . . conducted by **any Executive agency**." 29 U.S.C. § 794(a) (emphasis added). The law prohibits discriminatory conduct by an **agency**, not individual actors. Thus, there is only one proper

[14] The same outcome would have been reached regardless of whether Williams sued the Bureau of Prisons, or additional defendants in their individual or official capacities.

defendant in a Rehabilitation Act claim: the "head of the department, agency, or unit in which the allegedly discriminatory acts transpired." *See Grant v. Dept. of Treasury*, 194 F. Supp. 3d 25, 29 (D.D.C. June 16, 2016); *see also Iglesias v. True*, 401 F. Supp. 3d 680, 688 (S.D. Ill. July 25, 2019) ("The [Rehabilitation Act] does not permit suits against defendants in their individual capacities. The proper defendant is the agency or its director in his or her official capacity.") (internal citations omitted).[15]

In this case, the only proper defendant is the Bureau of Prisons, or its director in his official capacity. This was precisely the sole remaining defendant in this action prior to its proper dismissal: Director Carvajal. (J.A. 42).[16] Accordingly, this Court should affirm the district court's decision in its entirety, including its decision to dismiss additional defendants in its screening order.

[15] *Castle v. Wolford* does little to support Williams' contentions to the contrary. 165 F.3d 17 (4th Cir. 1998) (unpublished). It is an unpublished opinion wherein this Court held it was error to dismiss defendants from a § 1983 lawsuit because the plaintiff did not specifically name them as defendants in their individual, rather than official capacity. *Id.* Accordingly, it is irrelevant to the determination of the proper defendant in a Rehabilitation Act claim.

[16] Any error made by the district court is also harmless because even if Williams' Rehabilitation Act claim were allowed to proceed, he could obtain any and all relief to which he is entitled by recovery against the director of the Bureau of Prisons.

CONCLUSION

For the foregoing reasons, the Defendant respectfully submits that the judgment of the district court should be affirmed.

Respectfully submitted, this 2nd day of August, 2022.

MICHAEL F. EASLEY, JR.
United States Attorney

BY: */s/ Holly P. Pratesi*
HOLLY P. PRATESI
Special Assistant United States Attorney
U.S. Attorney's Office, Civil Division
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
Email: holly.pratesi@usdoj.gov
Attorney for the Defendant-Appellee

CERTIFICATE OF COMPLIANCE

1. Pursuant to Rule 32(g) of the Federal Rules of Appellate Procedure, I hereby certify that this brief meets the page or type-volume limits of Rule 32(a) because, exclusive of the portions of the document exempted by Rule 32(f), this brief contains:

☐ _____ Pages *(may not exceed 30 pages for a principal brief or 15 pages for reply brief, pursuant to Rule 32(a)(7)(A))*; or

☐ 9,610 Words *(may not exceed 13,000 words for a principal brief or 6,500 words for reply brief, pursuant to Rule 32(a)(7)(B))*.

2. Further, this document complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in Microsoft Word 2016 using fourteen-point *Calisto MT*, a proportional-width typeface.

/s/ Holly P. Pratesi

HOLLY P. PRATESI
Special Assistant United States Attorney
U.S. Attorney's Office, Civil Division
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
Email: holly.pratesi@usdoj.gov
Attorney for the Defendant-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF user:

Michele Delgado
Daniel K. Siegel
Jennifer A. Wedekind

/s/ Holly P. Pratesi
HOLLY P. PRATESI
Special Assistant United States Attorney