[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-10983

D.C. Docket No. 1:15-cv-00244-RWS

Q.F.,

Plaintiff-Appellee,

versus

JERRY DANIEL,
Counselor, et al.,

Defendants,

AMY V. HOWELL,
Commissioner,
ALONZO MCMILLIAN,
Director,
TRACY PAGE,
Assistant Director,
GEORGE SMITH,
Director,
FRANK SPEARMAN,
Principal,
FRAN WELLS,
Director,

RONNIE WOODARD,
Director,

Defendants-Appellants.

No. 17-13030

D.C. Docket No. 1:15-cv-00244-RWS

Q.F.,

Plaintiff-Appellee,

versus

JERRY DANIEL,
Counselor,
SERGEANT SCHUVONDA DAVIS,
OFFICER CHRISTOPHER DURHAM,
COUNSELOR DEBORAH HAMBRICK,
AMY HOWELL,
Commissioner,
COURTNEY JONES,
Counselor,
ALYSIA MALLORY-HAYNES,
Counselor,
GARLAND HUNT,
Commissioner,
ALONZO MCMILLIAN,
Director,
DEBBIE MULLIS,
Counselor,
TRACY PAGE,

Assistant Director,
GEORGE SMITH,
Director,
FRANK SPEARMAN,
Principal,
TODD WEEKS,
Director,
FRAN WELLS,
Director,
RONNIE WOODARD,
Director,

Defendants-Appellants.

Appeals from the United States District Court
for the Northern District of Georgia

(April 9, 2019)

Before TJOFLAT and JORDAN, Circuit Judges, and HINKLE,* District Judge.

PER CURIAM:

Q.F., a sixteen-year-old male, alleges that he was physically and sexually assaulted multiple times while he was confined at the Eastman Youth Development Campus, a Georgia Department of Juvenile Justice Facility, in Eastman, Georgia, by another inmate and the members of the inmate's gang. In his civil rights complaint, filed pursuant to 42 U.S.C. § 1983, Q.F. asserts that multiple individuals—including the directors, supervisors, counselors, and a corrections officer at Eastman—

* The Honorable Robert L. Hinkle, United States District Judge for the Northern District of Florida, sitting by designation.

deprived him of his constitutional rights by showing deliberate indifference to the substantial risk that he would be assaulted at the riotous and violent facility. This is an appeal by a number of defendants who were denied qualified immunity at the motion to dismiss stage.

I [1]

The allegations in this case echo systemic issues within the DJJ dating back to 1998, when a U.S. Department of Justice investigation and report revealed widespread constitutional violations by the DJJ. As alleged in Q.F.'s complaint, the 1998 DOJ report identified a wide array of abuses at DJJ facilities, including inadequate supervision of juvenile inmates, overcrowding, unsafe conditions, failure to provide appropriate mental health care, physical abuse by staff members, and abusive disciplinary practices. In order to correct the flaws throughout the system, the DJJ was required to operate under a Memorandum of Understanding from 1998 to 2009. The MOU, among other things, mandated specific, appropriate inmate-to-guard ratios (to properly protect and supervise the inmates) and required staff

[1] We accept as true the allegations in the complaint and view them in the light most favorable to Q.F. *See Kalina v. Fletcher*, 522 U.S. 118, 122 (1997); *James v. Fransen*, 857 F.3d 843, 850 (11th Cir. 2017).

members to check on each inmate every thirty minutes while sleeping or confined (to prevent physical and sexual assaults).

Q.F. alleges that, after the MOU was lifted in 2009, constitutional violations resumed in DJJ facilities like Eastman, particularly those related to unsafe inmate-to-guard ratios. In 2010, a DOJ-required audit revealed that Eastman failed to meet 31 standards related to the health, safety, and security of inmates. For example, Eastman staff was not performing cell inspections properly, a large percentage (80%) of inspected inmates possessed dangerous contraband, many guards were not equipped with radios for emergency communications, and staff did not properly classify and segregate inmates based on their age, size, and propensity for violence.

At the time of Q.F.'s alleged abuse, the inmate-to-guard ratio was approximately one guard to 32 inmates—twice the one guard to 16 inmates that the MOU once mandated. In addition, Eastman staff failed to properly classify and segregate inmates. Due to these systemic failures, inmates perpetrated physical and sexual assaults on an almost-daily basis and riots broke out frequently. From January through July of 2011, for example, there were six riots at Eastman, which included inmates burning beds and trash, inmates beating guards with broom sticks, and inmates assaulting each other. One riot involving 60 inmates was so severe that the guards were forced to call in local authorities to regain control of Eastman.

According to the complaint, Q.F. was targeted by other inmates soon after he arrived at Eastman in May of 2010, due to his small stature and slight build. On several occasions in 2010, Q.F. complained to Eastman staff and requested to be transferred to another facility, citing the conditions at Eastman and his belief that the staff could not adequately protect him. Feeling that Eastman staff was ignoring him, Q.F. repeatedly harmed himself in 2010 and 2011 to bring attention to his complaints and transfer requests.

After his complaints and self-harm, Q.F. was sexually and physically assaulted in May 2011 by Reginald Patton—an inmate who the Eastman staff allegedly knew was dangerous—and other members of Mr. Patton's gang. Over the next few months, Q.F. again complained to Eastman staff and again requested to be transferred. Q.F. also continued to harm himself in order to bring attention to his grievances. On June 30, 2011, Q.F.'s attorney, Steven Roba, wrote a letter to DJJ Commissioner Amy Howell and other officials at Eastman requesting that Q.F. be transferred. Shortly thereafter, Q.F. was transferred to another DJJ facility in Augusta, Georgia.

Q.F. filed suit under 42 U.S.C. § 1983 against several DJJ supervisors, Eastman supervisors, and Eastman staff for violating his Eighth and Fourteenth Amendment rights, alleging that the defendants were deliberately indifferent to the risks created by the dangerous conditions at Eastman. The defendants moved to

dismiss Q.F.'s complaint, arguing that Q.F. failed to exhaust his administrative remedies—as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a)—before bringing suit, that the complaint failed to state a claim, and that they were entitled to qualified immunity. The district court ruled that the PLRA's exhaustion requirement did not apply because Q.F. was not confined when he filed the operative complaint, that the complaint stated a claim against the DJJ commissioner (Defendant Howell), Eastman supervisors (Defendants McMillian, Page, Smith, Spearman, Wells, and Woodard) and other non-supervisory employees at Eastman, and that the defendants were not entitled to qualified immunity.[2]

The DJJ commissioner and the Eastman supervisors now appeal the district court's denial of their motion to dismiss.

II

We begin with exhaustion. The defendants argue that Q.F. never administratively exhausted the claims he now asserts. Q.F. responds that he was not confined when he filed the operative complaint, and as a result he was not required to comply with the PLRA. Q.F. alternatively argues that if he was obligated to exhaust administrative remedies, his verbal complaints and transfer requests—

[2] The district court also ruled that qualified immunity applied to Q.F.'s improper use of isolation claims, dismissed Q.F.'s claim that several staff members failed to take action to correct officer misconduct, dismissed Q.F.'s claims against two DJJ supervisors who did not work at Eastman during the relevant time period, and held that the complaint stated a claim against the Eastman non-supervisory defendants. These rulings are not at issue in this appeal.

alongside his attorney's letter echoing his complaints and transfer requests—exhausted all available administrative remedies because he received the relief he requested.[3]

A

The PLRA provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997(e). Based on the PLRA's plain language, this exhaustion requirement only applies when the plaintiff is confined in a correctional facility when the lawsuit is commenced. *See Harris v. Garner*, 216 F.3d 970, 974 (11th Cir. 2000) (establishing that "brought" as used in the PLRA refers to the filing or commencement of a lawsuit).

In this case, Q.F. filed two complaints against the defendants. Q.F. filed his original complaint on March 3, 2014, *while he was confined* in another Georgia correctional facility on unrelated charges, but voluntarily dismissed his claims on August 27, 2014. On January 26, 2015, *after he was released from custody*, Q.F. filed an almost identical complaint based on Georgia's renewal statute, which allows

[3] We have appellate jurisdiction to address the exhaustion issue because the district court certified its ruling for interlocutory appeal. *See* 28 U.S.C. § 1292(b).

a plaintiff to renew an action that was voluntarily dismissed within six months.[4] *See* O.C.G.A. § 9-2-61 ("When any case has been commenced in either a state or federal court within the applicable statute of limitations and the plaintiff discontinues or dismisses the same, it may be recommenced in a court of this state or in a federal court either within the original applicable period of limitations or within six months after the discontinuance or dismissal, whichever is later . . . .").

The defendants do not dispute that the PLRA's exhaustion requirement applies only if the plaintiff was confined on the date he commenced the action. They argue that the PLRA applies because Q.F. was confined when he filed his original lawsuit, and under § 9-2-61, the renewed action merely relates back to the original action. In other words, Q.F.'s confinement status must be evaluated as of the time of the original complaint.

Q.F. counters that under Georgia law a renewed action is not "a continuance of the original action" but is instead "de-novo." *SunTrust Bank v. Lilliston*, 809 S.E.2d 819, 822 (Ga. 2018) (citations omitted). Therefore, his confinement status on the date he filed this new and renewed lawsuit controls and the PLRA's exhaustion requirement does not apply.

[4] Because § 1983 does not contain a statute of limitations, courts look to state law to determine the limitations period for a civil rights action. *See Wilson v. Garcia*, 471 U.S. 261, 280 (1985); *Boyd v. Warden, Holman Corr. Facility*, 856 F.3d 853, 872 (11th Cir. 2017).

Although we have not addressed this issue, the Georgia Court of Appeals has. In *Baskin v. Georgia Department of Corr.*, 612 S.E.2d 565, 566–67 (Ga. Ct. App. 2005), the plaintiff filed his original suit while incarcerated, voluntarily dismissed that action, and then renewed his suit after he was released. The Court of Appeals reiterated that a renewed suit is a "de novo" action under Georgia law and held that the plaintiff was not subject to the PLRA because he was not confined at the time he filed the renewed lawsuit. *See id*. at 567. The district court in this case relied on *Baskin* to hold that Q.F.'s confinement status on the date he filed his renewed action controlled, and thus he did not need to exhaust the available administrative remedies before filing suit.

The defendants urge us to reject *Baskin* and its premise—espoused in multiple Georgia Supreme Court cases—that a renewal action is not merely a continuation of the original action. *See, e.g.*, *Lilliston*, 809 S.E.2d at 822. In substance, the defendants argue that a plaintiff like Q.F. should not be able to use renewal as a "procedural devise . . . to manufacture a way around" the exhaustion requirement. Appellants' Br. at 6. Georgia courts, however, have repeatedly rejected this argument. *See, e.g., Robinson v. Boyd*, 701 S.E.2d 165, 168 (Ga. 2010) ("As we have explained, the renewal provision gives 'a plaintiff an opportunity to escape from an untenable position and relitigate the case . . . despite inconvenience and

irritation to the defendant.'") (quoting *Lakes v. Marriott Corp.*, 448 S.E.2d 203, 204 (Ga. 1994)) (internal quotation marks omitted).

The defendants have not given us much reason to reject *Baskin*, and we generally "adhere to the decisions of the state's intermediate appellate courts unless there is some persuasive indication that the state's highest court would decide the issue otherwise." *Flintkote v. Dravo Corp.*, 678 F.2d 942, 945 (11th Cir. 1982). This case, however, does not require us to find that confinement status on filing date of a renewed action controls. Even if we adopt the defendants' argument that the PLRA's exhaustion requirement applies, Q.F. exhausted his available administrative remedies before filing his original action.

B

In holding that Q.F.'s claims were not subject to the PLRA's exhaustion requirement, the district court assumed—without analyzing the issue—that Q.F. did not exhaust his administrative remedies. *See* D.E. 53 at 10. We review that determination de novo. *See Alexander v. Hawk*, 159 F.3d 1321, 1323 (11th Cir. 1998). As we explain below, DJJ policy outlined an informal grievance process, Q.F. and his attorney separately utilized the informal process to complain about the conditions at Eastman and request a transfer, DJJ staff accepted those complaints and requests, and the DJJ granted Q.F. the transfer he requested. For these reasons,

we conclude that Q.F. sufficiently exhausted the administrative remedies available to him. *See Booth v. Churner*, 532 U.S. 731, 736, 738–39 (2001).[5]

Congress designed the PLRA's exhaustion requirement to reduce the quantity, and improve the quality, of prisoner suits. *See generally Porter v. Nussle*, 534 U.S. 516, 524 (2002). The exhaustion requirement also sought to "affor[d] corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case." *Id.* *See also Woodford v. Ngo*, 548 U.S. 81, 93 (2006). The PLRA no doubt "requires proper exhaustion," *Woodford*, 548 U.S. at 93, but neither the Supreme Court nor we have ever required an inmate to continue to file grievances or appeals after he or she obtains the requested relief. To the contrary, the Supreme Court explained in a unanimous opinion that the adjective "'available' [in the PLRA] requires the possibility of some relief for the action complained of," so that "exhaustion is [not] required where the relevant administrative procedure lacks authority to provide any relief . . . in response to a complaint." *Booth*, 532 U.S. at 738–39.

[5] The defendants assert that Q.F. conceded that he failed to exhaust his administrative remedies by not disputing a statement in the motion to dismiss that he did not submit any grievances at Eastman. We disagree. Q.F.'s response noted that the defendants "allege" a failure to exhaust, but it did not concede that fact. *See* D.E. 39 at 15. To the contrary, Q.F.'s response stated that he requested to be transferred, that Q.F.'s lawyer sent a letter communicating his complaints and request to be transferred, and that Q.F. was transferred shortly thereafter. *See* D.E. 39 at 5, 6; D.E. 39-1 at 7. In any event, the fact that Q.F. did not submit formal grievance forms at Eastman does not necessarily establish that he failed to exhaust. *See Whatley v. Smith*, 898 F.3d 1072, 1084–85, n.60 (11th Cir. 2018) (noting that a prison may waive a procedural defect in a grievance by failing to enforce its procedural requirements or by resolving the grievance on the merits).

To determine whether an inmate properly exhausted his administrative remedies, we look to the facility's policies and regulations. *See Jones v. Bock*, 549 U.S. 199, 206–07 (2007); *Miller v. Tanner*, 196 F.3d 1190, 1193 (11th Cir. 1999). Here, the relevant DJJ policy laid out multiple avenues to resolve "complaint[s] regarding a condition, circumstance, or action considered by the grievant to be unjust." D.E. 47 at 12–13. These avenues included both informal and formal grievances.[6]

Under the formal resolution of grievances, inmates can complete a grievance form provided by the facility and submit the grievance form for formal review, and possibly a formal hearing, by a grievance officer. *Id.* at 13. On the other hand, the policy also provides that an inmate "may resolve differences by discussing them informally with staff" and that "[s]taff shall be available to listen to their concerns and take appropriate action to immediately resolve issues whenever possible." *Id.* The formal and informal grievance procedures are set forth in individual sections of the DJJ policy, and the only time restriction in the policy provides that an inmate may submit a formal written grievance "at any reasonable time." *Id.* The DJJ's

[6] In the district court, the DJJ grievance policy was filed under seal and attached to an affidavit submitted with the defendants' motion to dismiss. That affidavit attached multiple documents, some containing personal information related to Q.F.'s confinement at Eastman. On appeal, both parties cite to and quote the policy in their briefs, and we see no reason for the policy itself to remain confidential. *See Romero v. Drummond Co.*, 480 F.3d 1234, 1248 (11th Cir. 2007).

informal grievance procedure does not set time restrictions for either the inmate's complaint or the DJJ's response. *Id.*

After establishing the available grievance procedures, the DJJ policy outlines the process for the "Appeal of [a] Hearing Officer's Decision." *Id.* It is unclear, based on the wording of the policy, whether the appeal process even applies to informal grievances—as an inmate appeals a hearing or grievance officer's decision and only the formal grievance process involves a formal hearing, hearing officer, or grievance officer. *See id.* But assuming that the appeal process applies to informal grievances, appealing is not mandatory because the policy says that an inmate "may" appeal if he "is not satisfied with the decision of the grievance officer." *Id.* *See DIRECTV, Inc. v. Brown*, 371 F.3d 814, 817 (11th Cir. 2004) (concluding that a statute was permissive, in part, because the word "may" implies discretion); *Dietrich v. Key Bank, N.A.*, 72 F.3d 1509, 1515 (11th Cir. 1996) (same); *Gregory v. Sexual Offender Registration Review Bd.*, 784 S.E.2d 392, 397, 402–03 (Ga. 2016) (same).

Taking the allegations in the complaint as true, Q.F. utilized the DJJ's informal grievance procedure, which does not contain any time restrictions. *See Turner*, 541 F.3d at 1082. On several occasions in 2010, Q.F. verbally complained to DJJ staff about the conditions and harm he suffered at Eastman and requested to be transferred. Throughout this time period, Q.F. repeatedly harmed himself hoping to bring attention to his complaints and requests. In April, May, and June of 2011,

Q.F. again requested a transfer. At no time did Eastman or DJJ officials tell Q.F. that his grievances were procedurally deficient or untimely. Q.F.'s attorney sent a letter to the DJJ Commissioner and Eastman officials in late June 2011 reiterating Q.F.'s complaints and demanding a transfer. Shortly thereafter, the DJJ granted Q.F. his requested relief and transferred him to a different facility.[7]

We conclude that these allegations suffice to show that Q.F. exhausted all available administrative remedies when or before the DJJ granted him favorable relief. First, Q.F.'s verbal complaints and requests followed the DJJ's policy concerning informal grievances. Q.F. repeatedly pled his concerns with Eastman staff, requested a transfer, and told Eastman staff that his self-harm was a call for help to draw attention to his grievances. Second, the letter from Q.F.'s attorney likewise communicated Q.F.'s safety concerns and demanded a transfer.

To the extent that the defendants argue that either Q.F.'s verbal complaints or the attorney letter did not comply with the DJJ grievance policy, we disagree, but note that this contention is not determinative. We will not enforce procedural requirements that the defendants themselves elected not to enforce. *See Whatley v.*

[7] In addition to the formal and informal grievance procedure, the DJJ grievance policy expressly allows the inmate to communicate their grievance by sending a letter to the Director at Eastman. *See* D.E. 45 at 15. The DJJ grievance policy does not specifically address if an inmate's attorney can make this grievance on the inmate's behalf. It does, however, permit a "parent or guardian" to mail in a grievance on the inmate's behalf and does not prohibit an inmate's attorney from communicating a grievance. *See id*. In any event, the DJJ never took the position that Q.F.'s attorney could not act on Q.F.'s behalf.

Warden, 802 F.3d 1205, 1215 (11th Cir. 2015) ("We hold that a prisoner has exhausted his administrative remedies when prison officials decide a procedurally flawed grievance on the merits."). Regardless of whether Q.F.'s informal grievances and his attorney's letter complied with its policy, the DJJ considered Q.F.'s complaints on the merits and ultimately granted the requested relief. The DJJ, in our view, waived any argument that the grievances were procedurally flawed. *See id.*

The defendants' argument that Q.F. failed to continually file grievances or appeal those grievances also fails. As we noted earlier, the appeal procedure was optional because the grievance policy provides that an inmate "may" appeal "if [he] is not satisfied with the decision of the [g]rievance [o]fficer." D.E. 47 at 16. *See DIRECTV, Inc.*, 371 F.3d at 817; *Gregory*, 784 S.E.2d at 397. A fair reading of the appeal section of the policy implies that an inmate may not and need not appeal a decision if he is satisfied by the response. *See Cent. of Ga. Ry. Co. v. Woodall*, 78 S.E. 781, 782 (Ga. Ct. App. 1913) (explaining that a conditional statement starting with the word "if" is a qualifying statement that "controls and limits all that follows in the subsequent statement").

The PLRA, moreover, does not require inmates to continue filing or appealing grievances after obtaining favorable relief. Although the PLRA "requires proper exhaustion," *Woodford*, 548 U.S. at 93, it does not require an inmate to beat his head against a brick wall. *See* Christine Ammer, *The American Heritage Dictionary of*

Idioms 33 (2d ed. 2013). Although we have not directly addressed this issue, several of our sister circuits have held that "[p]risoners are not required to file additional complaints or appeal favorable decisions in such cases." *Ross v. Cnty. of Bernalillo*, 365 F.3d 1181, 1186–87 (10th Cir. 2004) *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199, 223 (2007). *See also Harvey v. Jordan*, 605 F.3d 681, 685 (9th Cir. 2010) ("Once the prison officials purported to grant relief with which [the plaintiff] was satisfied, his exhaustion obligation ended."); *Thornton v. Snyder*, 428 F.3d 690, 695 (7th Cir. 2005) ("[W]e do not take the requirement to exhaust 'all available' remedies to mean [an inmate] must appeal grievances that were resolved as he requested . . . ."); *Abney v. McGinnis*, 380 F.3d 663, 669 (2d Cir. 2004) ("Indeed, it would be counterintuitive to require inmates who win during the grievance process to appeal their victories."); *Toomer v. BCDC*, 537 F. App'x 204, 206 (4th Cir. 2013) ("After receiving a favorable outcome on the merits of his grievance at a lower step in the process, [the plaintiff] was not obligated to pursue an administrative appeal . . . ."); *Diaz v. Palakovich*, 448 F. App'x 211, 216 (3d Cir. 2011) ("There was no need to appeal such favorable grievance outcomes in order to exhaust administrative remedies under the DOC's Inmate Grievance System Policy and the PLRA."); *Rosa v. Littles*, 336 F. App'x 424, 427 (5th Cir. 2009) ("[T]here was no need to file a step-two grievance [after receiving] all the relief he could have obtained through [facility's] grievance process.").

We recently acknowledged that "[a] grievance can be exhausted without being appealed all the way through the grievance resolution procedure." *Whatley*, 898 F.3d at 1085 n.60. Favorably citing the Tenth Circuit's decision in *Ross*, 365 F.3d at 1186, we described how a defendant may waive an exhaustion defense by providing favorable relief. *See Whatley*, 898 F.3d at 1085 n.60.

The Supreme Court's unanimous opinion in *Booth* dictates a similar result. In that case, the Court said that grievances are not required "where the relevant administrative procedure lacks authority to provide any relief . . . [because] [w]ithout the possibility of some relief, the administrative officers would presumably have no authority to act on the subject of the complaint, leaving the inmate with nothing to exhaust." 532 U.S. at 741, 741 n.4. In this case, Q.F. was not required to request a transfer away from Eastman after he was moved to another facility in Augusta, Georgia, because such a transfer was no longer possible. *Id.* Likewise, Q.F. was not required to continually complain about the conditions at Eastman, as the staff at his new facility in Augusta had no authority to act on such complaints. *Id.*

We have noted seven important policies favoring exhaustion: (1) to avoid premature interruption of the administrative process; (2) to let the agency develop the necessary factual background; (3) to permit the agency to exercise its discretion or apply its expertise; (4) to improve the efficiency of the administrative process; (5) to conserve scarce judicial resources; (6) to give the agency a chance to discover and

correct its own errors; and (7) to avoid frequent and deliberate flouting of the administrative processes. *See Alexander*, 159 F.3d at 1327 (quoting *Kobleur v. Grp. Hospitalization & Med. Servs., Inc.*, 954 F.2d 705, 712 (11th Cir. 1992)). The Supreme Court in *Porter v. Nussle*, 534 U.S. 516, 525 (2002), summarized the purpose of exhaustion as "afford[ing] corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case." By providing this opportunity, Congress expected that "corrective action taken in response to an inmate's grievance might improve prison administration and satisfy the inmate, thereby obviating the need for litigation." *Id*. Requiring inmates to file or appeal grievances after relief is granted does not comport with the underlying polices of the exhaustion requirement.

To summarize, the DJJ accepted the grievances and transfer requests of Q.F. and his attorney, considered those grievances, and granted Q.F. relief by moving him from Eastman. At that point, Q.F. exhausted all available administrative remedies as required by the PLRA and was not required to do more.

III

The defendants also appeal the district court's denial of qualified immunity on Q.F.'s claims that he was attacked by other inmates because the defendants failed to staff a sufficient number of guards at Eastman and failed to adequately classify or segregate inmates. We review the district court's ruling on qualified immunity *de*

novo, applying the same standard as the district court. *See Bowen v. Warden Baldwin St. Prison*, 826 F.3d 1312, 1319 (11th Cir. 2016).

In this circuit, "the *Twombly–Iqbal* plausibility standard" applies equally to "[p]leadings for § 1983 cases involving defendants who are able to assert qualified immunity as a defense." *Randall v. Scott*, 610 F.3d 701, 707 n.2, 709 (11th Cir. 2010). To survive a motion to dismiss, the complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). We do not require "detailed factual allegations," but "a naked assertion . . . without some further factual enhancement . . . stops short of the line between possibility and plausibility." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007). The plausibly standard "is not akin to a probability requirement" but is a "context-specific" inquiry drawing on our "judicial experience and common sense." *Iqbal*, 556 U.S. at 678, 679 (citing *Twombly*, 550 U.S. at 556, 557) (internal quotations omitted).

A

On appeal, the defendants argue that the district court erred by not granting them qualified immunity. "To receive qualified immunity, [a] government official must first prove that he was acting within his discretionary authority." *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1098 (11th Cir. 2014) (quoting *Gonzalez v.*

Reno, 325 F.3d 1228, 1234 (11th Cir. 2003)). Q.F. does not dispute that the defendants were acting within their discretionary authority, so Q.F. must establish that qualified immunity does not apply because "the facts alleged make out a violation of a constitutional right and [ ] the constitutional right was clearly established at the time of [the] conduct." *Perez v. Suszczynski*, 809 F.3d 1213, 1218 (11th Cir. 2016). We therefore consider two questions: (1) whether the allegations in the complaint—assumed to be true—show that the defendants violated Q.F.'s constitutional rights; and, if so, (2) whether that constitutional right was clearly established at the time. *See, e.g.*, *Bowen*, 826 F.3d at 1319 (quoting *Perez*, 809 F.3d at 1218).

1

Q.F. claims that the defendants violated the Eighth Amendment's prohibition on cruel and unusual punishment by failing to reasonably protect him from the constant inmate-on-inmate violence at Eastman. "It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Helling v. McKinney*, 509 U.S. 25, 31 (1993). Among other things, "[t]he Eighth Amendment imposes a duty on prison officials 'to protect prisoners from violence at the hands of other prisoners.'" *Rodriguez v. Sec'y for Dep't of Corr.*, 508 F.3d 611, 616–17 (11th Cir. 2007) (quoting *Farmer v. Brennan*, 511 U.S. 825, 833 (1994)). In this circuit, "it is

well settled that a prison inmate has a constitutional right to be protected from the constant threat of violence and from physical assault by other inmates." *Zatler v. Wainwright*, 802 F.2d 397, 400 (11th Cir. 1986). "[H]aving stripped [an inmate] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials *are not free to let the state of nature take its course*." *Rodriguez*, 508 F.3d at 617 (quoting *Farmer*, 511 U.S at 833) (emphasis added).

Prison officials violate the Eighth Amendment when they (a) subjectively know that the inmate faces a substantial risk of serious harm and (b) disregard that known risk. *See Rodriguez*, 508 F.3d at 617. *See also Cottone v. Jenne*, 326 F.3d 1352, 1358 (11th Cir. 2003); *Hale v. Tallapoosa Cty.*, 50 F.3d 1579, 1582–83 (11th Cir. 1995). As to the subjective knowledge element, the Supreme Court in *Farmer v. Brennan*, 511 U.S at 842, determined that "[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." For example, we can infer that prison officials knew that the inmate faced a substantial risk based on "the very fact that the risk was obvious." *Id*. After establishing that the official subjectively knew of a risk, the plaintiff may establish the second element—that the officials disregarded the known risk—by showing that

the officials failed to respond to that risk in an objectively reasonable manner. *See Rodriguez*, 508 F.3d at 617; *Cottone*, 326 F.3d at 1358.

Here, the district court concluded that the complaint alleged sufficient facts to plausibly suggest that the defendants disregarded the known risk that Q.F. would be assaulted by another inmate. We agree.

According to the complaint, Defendant Howell was the DJJ Commissioner—the DJJ's most senior official—from January to November of 2011 and oversaw Eastman—the largest DJJ facility in the state. *See* D.E. 1 at ¶¶ 12, 88. Q.F. also alleges that Defendant Howell was aware that Eastman staffed too few guards and improperly classified and segregated inmates due to her supervisory role, the regular violence occurring at Eastman, and the audits performed at Eastman in 2010 and 2011. *See id.* at ¶¶ 12, 128–35, 136–37, 141–42. *See also id.* at ¶¶ 282, 285–86, 289, 282–95 (specifically addressing staffing); *id.* at ¶¶ 300–10 (specifically addressing classification and segregation). During the first two months that Defendant Howell served as DJJ's Commissioner, there were multiple riots at Eastman, one of which required additional guards to quell the disturbance, *see id. at* ¶¶ 103–05, and Defendant Howell replaced the then-Director of Eastman with Defendant Smith. *See id.* at ¶ 21.

Q.F. also alleges that Defendant Howell understood that the failure to sufficiently staff Eastman and classify or segregate inmates increased the risk of

violence to inmates, like Q.F., due to the relevant DOJ report, the MOU, and the audits of Eastman. *See id.* at 12, 31, 53, 56, 128, 136, 282, 287–88, 291, 295, 305, 308.[8] In November of 2011, Defendant Howell was allegedly asked to resign and was transferred to another state agency because the agency "was in crisis mode due to safety and security deficiencies." *Id.* at ¶ 12 (quoting a DJJ press release).

The remaining defendants on appeal all held supervisory positions at Eastman.[9] The complaint alleges that the Eastman supervisors, by virtue of their positions at Eastman, were aware of Eastman's policies, customs, and practices related to staffing, classification, and segregation. *See* D.E. 1 at ¶¶ 16, 18, 19, 20, 22. Q.F. also asserts that the Eastman Supervisors, like Defendant Howell, in fact knew that Eastman did not staff enough guards to protect its inmates and did not properly classify and segregate inmates and that the Eastman supervisors understood that such failures created a substantial risk of harm to the inmates. *See, e.g.*, *id.* at ¶¶ 295–95, 308–09.

[8] The factual allegations against Defendant Woodard, who served as the Director of Secure Campuses for the DJJ, in relevant part, mirror the allegations against Defendant Howell. *See* D.E. 1 at ¶¶ 23, 282–95, 300–10.

[9] Defendant McMillian was the Program Director at Eastman, Defendant Page was the Assistant Director at Eastman, Defendant Smith was the Director of Eastman, Defendant Spearman was the Principal at Eastman, and Defendant Wells was the Director of Eastman. *See* D.E. 1 at ¶¶ 16, 18, 19, 20, 22.

Accepting the complaint's allegations, the district court concluded that the defendants (1) knew that Eastman was understaffed and that the inmates were not properly classified or segregated, (2) understood that such understaffing and insufficient classification or segregation increased the risk of inmate-on-inmate violence, and (3) failed to address that known risk. The district court then ruled that the complaint alleged an Eighth Amendment violation, that Eighth Amendment right was clearly established at the time, and that the defendants were not entitled to qualified immunity on Q.F.'s claims based on understaffing and insufficient classification or segregation.

The defendants argue that the district court erred in concluding that the complaint plausibly alleged that the defendants knew the risk that a high inmate-to-guard ratio and inadequate classification or segregation posed to inmates like Q.F. Initially, the defendants assert that the complaint does not allege that any of the defendants participated in, encouraged, witnessed, were present during, or were informed of the assaults on Q.F. Moreover, the defendants argue that prior assaults and unrest at Eastman were not sufficiently connected to Reginald Patton and his gang to establish that they understood the risk those specific individuals posed to Q.F. As at Eastman, the defendants' interpretation of their obligations under the Eighth Amendment falls short.

We do not require a plaintiff to allege that prison officials knew of, participated in, encouraged, or witnessed a particular assault to defeat qualified immunity. *See, e.g.*, *Bowen*, 826 F.3d at 1318; *Rodriguez*, 508 F.3d at 616; *Cottone*, 326 F.3d at 1356. Likewise, "prison official[s] [cannot] escape liability for deliberate indifference by showing that . . . [they] did not know the complainant was especially likely to be assaulted *by the specific prisoner* who eventually committed the assault." *Farmer*, 511 U.S. at 843 (emphasis added). Here, Q.F. alleges that the conditions at Eastman—namely insufficient staffing, classifying, and segregating—created a known risk of inmate-on-inmate violence for all inmates, that the risk was realized by way of assaults and riots, and that Q.F. fell victim to such violence due to the defendants' failure to reasonably respond.

The defendants also argue that the complaint does not allege that the defendants understood the general risk that inmate-on-inmate violence posed to the inmates at Eastman. The district court noted that the MOU, although not in force at the time of the alleged constitutional violations, informed the defendants that Eastman was understaffed and that high inmate-to-guard ratios increase the risk of inmate-on-inmate violence. The district court also pointed to multiple audits of Eastman—performed in 2010 and 2011—to show that the defendants knew Eastman was not properly classifying and segregating inmates and that improper classification or segregation increases the risk of inmate-on-inmate violence.

We agree with the district court. The complaint contains sufficient facts, if proven, to show that the defendants knew that the conditions at Eastman posed a serious risk of inmate-on-inmate violence to Q.F. In addition to the MOU and two audits cited by the district court, the defendants' supervisory positions suggest, at least by inference, that the defendants were aware of the staffing, classification, and segregation issues at Eastman. *See Farmer*, 511 U.S. at 842 (allowing the plaintiff to establish subjective knowledge of a risk by inference or from circumstantial evidence). In our view, the complaint also alleges sufficient facts to show that the risk of inmate-on-inmate violence at Eastman was "obvious." *Id.* at 842–44, 846 n.9. In short, it alleges almost-daily assaults, specific instances of violence, and at least six riots occurring at Eastman between May of 2010 and July of 2011.

The defendants argue that the several riots at Eastman would not demonstrate to the defendants a high risk of inmate-on-inmate violence because the riots involved inmates assaulting guards, not other inmates. We disagree. Initially, at least one of the alleged riots involved an inmate beating another inmate with a broom handle so severely that it caused brain damage. *See* D.E. 1 at ¶ 110. Another incident included groups of inmates striking each other with closed fists. *See* D.E. 1 at ¶¶ 118–19. In any event, six prison riots, alongside the regular violence and specific assaults alleged in the complaint, made the risk of inmate-on-inmate violence at Eastman obvious.

In stating that qualified immunity does not protect prison officials who knew of and disregarded "an obvious, substantial risk to inmate safety," the Supreme Court said: "[I]t does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether [an inmate] faces an excessive risk of attack for reasons personal to him or because all [inmates] in his situation face such a risk." *Farmer*, 511 U.S. at 843. Q.F.'s allegations span three hundred and ninety four paragraphs, painting the picture of an entirely out-of-control juvenile detention facility. The allegations include physical assaults, sexual abuse, and riots so unrestrained that the DJJ had to call in outside law enforcement to regain authority. *See, e.g.*, D.E. 1 at ¶ 99, 120, 126. In short, the DJJ and the defendants "stripped [inmates like Q.F.] of virtually every means of self-protection and . . . let the state of nature take its course." *Rodriguez*, 508 F.3d at 617 (quoting *Farmer*, 511 U.S at 833) (quotation marks omitted). The defendants' failure was not unknowing, and it was not reasonable.

We hold that the complaint plausibly alleges that the defendants subjectively knew that Q.F. faced a substantial risk of assault by another inmate and unreasonably disregarded that known risk. At the Rule 12(b)(6) stage, the defendants are not entitled to qualified immunity.

2

Although the complaint made the required showing that the defendants violated Q.F.'s Eighth Amendment rights, "qualified immunity will still attach unless that right was clearly established at the time." *Perez*, 809 F.3d at 1221. "In determining whether a right is clearly established, the relevant, dispositive inquiry is 'whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" *Caldwell*, 748 F.3d at 1102 (quoting *Cottone*, 326 F.3d at 1359).

The constitutional violations alleged in this case occurred while Q.F. was incarcerated at Eastman between May of 2010 and June of 2011. More than 15 years earlier, the Supreme Court held that prison officials violated the Eighth Amendment by ignoring a known risk that an inmate would be assaulted by other inmates. *See Farmer*, 511 U.S. at 847. In another case, we held that, in 2010, it was clearly established that the Eighth Amendment protected inmates from prison officials' indifference to a known risk of inmate-on-inmate violence. *See Bowen*, 826 F.3d at 1325 (citing *Caldwell*, 748 F.3d at 1102 and *Cottone*, 326 F.3d at 1358–59). Based on these cases, the constitutional right that the defendants allegedly violated was clearly established when Q.F. was confined at Eastman.

IV

For the foregoing reasons, we affirm the district court's denial of the defendants' motion to dismiss for failure to exhaust his administrative remedies and

the district court's denial of qualified immunity as to certain defendants on Counts I and II of the complaint.

AFFIRMED.