

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 8 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BILAL ADOM,

Plaintiff - Appellant,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION; M. ATCHLEY,
Warden; MONTEGRANDE,
Doctor; SCOTT LADD,
Doctor; LOTERSZTAIN, Doctor; S.
SAWYER; R. MOJICA, ADA
Coordinator; BIANCA RUBIO, Certified
Nursing Assistant (CNA),

Defendants - Appellees.

No. 24-4756

D.C. No.

4:22-cv-07150-JSW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Argued and Submitted October 23, 2025
San Francisco, California

Before: PAEZ, BEA, and FORREST, Circuit Judges;
Partial Concurrence and Partial Dissent by Judge Bea.

In a concurrently filed opinion, we reverse the district court's grant of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

summary judgment as to Adom’s claim against the California Department of Corrections and Rehabilitation under the Americans with Disabilities Act (“ADA”). *Adom v. Cal. Dept. of Corrs. & Rehab.*, — F.4th — (9th Cir. 2026). We do not repeat the facts and posture of the case here. Adom also brought claims under 42 U.S.C. § 1983 against several individual defendants alleging violations of the Eighth Amendment.¹ As to Adom’s Eighth Amendment claims, we reverse as to Defendant Dr. Montegrando, affirm as to Defendant Dr. Ladd, and remand. Our review is de novo. *Oliver v. Keller*, 289 F.3d 623, 626 (9th Cir. 2002).

1. Adom advances two theories of how Dr. Montegrando violated his Eighth Amendment rights: 1) she conducted a physical examination that caused him significant pain; and 2) she refused to provide medical assistance for his incontinence. The first theory sounds in excessive force, the second in deliberate medical indifference.

1.a. There is a triable issue of fact as to whether Dr. Montegrando used excessive force during her examination of Adom. When prison officials are accused of using excessive force in violation of the Eighth Amendment, the core inquiry is

¹ Adom initially brought Eighth Amendment claims against four unnamed and six named defendants: Warden M. Atchley, ADA Coordinator R. Mojica, Nurse Bianca Rubio, and Drs. Faye Montegrando, Scott Ladd, and M. Lotersztain. On appeal, Adom challenges only the district court’s grant of summary judgment as to Drs. Montegrando and Ladd. Accordingly, we affirm as to the remaining defendants, and address only the claims against Drs. Montegrando and Ladd.

“whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). The extent of injury is one relevant consideration, but it is not the end of the inquiry. *Id.* We must also consider the relationship between the need for force and the amount of force used, the threat perceived by prison officials, and any efforts made to temper the severity of the force. *Id.*

Viewing the facts in the light most favorable to Adom, a reasonable jury could find that Dr. Montegrando used significant and unnecessary force during her physical examination. Dr. Montegrando questioned Adom about his need for a wheelchair and accused him of lying. Dr. Montegrando then instructed Adom to extend his left leg and repeatedly struck down on it with aggressive force, instructing him to resist her, which he physically could not do because of his chronic spinal condition that Dr. Montegrando knew about from his medical records. The force caused a sharp, stabbing pain along Adom’s spine that radiated down his back and into his legs each time she struck down. The force and pain of the final strike caused his left leg to collapse on to the foot pedal of his wheelchair, causing “intense pain” and “abrasions” to his Achilles heel. Adom alleges that the examination was so painful that it caused him to involuntarily urinate, soaking his boxers, pants, and wheelchair seat. Although Adom, “extremely embarrassed,” told Dr. Montegrando that he had urinated on himself and tried to raise the issue of his discontinued

incontinence supplies, she ignored him and continued the exam. In examining his upper body, she again applied such pressure that Adom could not resist her force, and his arm slammed into the “sharp rusted crevice” in the brake handle of his wheelchair, resulting in “intense pain and abrasions.”

Adom provided evidence tending to show that the examination, and thus the use of force, was unnecessary. Dr. Montegrando stated that the sole purpose of the medical visit was to follow up on Adom’s appointment with an outside ophthalmologist, not to test his strength. And Dr. Montegrando’s medical notes do not mention the physical examination at all.

Dr. Montegrando argues that summary judgment in her favor is warranted because she applied only de minimis force and Adom experienced only de minimis injury. An Eighth Amendment claim requires more than a de minimis use of force, and in monetary damages cases, the Prison Litigation Reform Act, 42 U.S.C. § 1997e(e), correspondingly requires a more than de minimis physical injury. *Oliver*, 289 F.3d at 627–28. Because Adom’s verified complaint and sworn affidavit complain of “abrasions” and significant pain, he has demonstrated a triable issue concerning the extent of his injury. *Bell v. Williams*, 108 F.4th 809, 830 (9th Cir. 2024). Injuries are also a “proxy” for the amount of force used. *Id.* at 821. Because a jury could find that Adom’s injuries were more than de minimis, and because he has put forward evidence supporting an inference that the physical examination was

unnecessary, he has also demonstrated that there is a triable issue concerning whether the amount of force used was permissible. *See Hudson*, 503 U.S. at 9–10.

Dr. Montegrando also asserts the defense of qualified immunity, but we decline to consider this defense because she did not raise it before the district court. *Villanueva v. California*, 986 F.3d 1158, 1164 n.4 (9th Cir. 2021). Dr. Montegrando may raise this defense on remand.

1.b. Adom has not put forward sufficient evidence to establish a triable issue about whether Dr. Montegrando was deliberately indifferent to his serious medical needs. An Eighth Amendment claim for deliberate indifference to medical needs has two prongs: “First, the plaintiff must show a serious medical need by demonstrating that failure to treat a prisoner’s condition could result in further significant injury or the unnecessary and wanton infliction of pain. Second, the plaintiff must show the defendant’s response to the need was deliberately indifferent.” *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (quoting *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)). An official is deliberately indifferent only when she “knows of and disregards an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

We assume, as the district court did, that Adom has satisfied the first prong. But he has not shown a genuine issue of fact on the second. At most, Adom has established that Dr. Montegrando overlooked or ignored a single daytime episode of

urinary incontinence. Indeed, Dr. Montegrando examined Adom only nine days after he stopped receiving his incontinence supplies. There are no other facts in the record suggesting that Dr. Montegrando was aware of Adom’s need for diapers.

2. We affirm the district court’s summary judgment order as to Adom’s Eighth Amendment claim against Dr. Ladd that sounds in deliberate indifference to serious medical needs. As with Dr. Montegrando, we assume that Adom has established a serious medical need, but he has not shown that Dr. Ladd was deliberately indifferent.

On its own, “[a] difference of opinion between a physician and the prisoner—or between medical professionals—concerning what medical care is appropriate does not amount to deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012), *overruled on other grounds by Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014) (en banc). Where medical treatment is provided in response to the inmate’s needs, deliberate indifference is established by showing that “the course of treatment the doctors chose was medically unacceptable under the circumstances,” and was chosen “in conscious disregard of an excessive risk to [the] plaintiff’s health.” *Id.* at 988 (quoting *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996)).

Here, Dr. Ladd prescribed medication in response to Adom’s complaint of incontinence. Although Adom was required to stop that medication within one week, there is no evidence in the record to support the conclusion that the decision

to prescribe medication rather than diapers “was medically unacceptable under the circumstances.” *Id.* at 988 (quoting *Jackson*, 90 F.3d at 332).

3. In sum, we reverse the district court’s summary judgment order as to Dr. Montegrando, but only on the theory that her physical examination violated Adom’s Eighth Amendment right to be free from excessive force. We affirm the summary judgment order as to the theories that Dr. Montegrando and Dr. Ladd were deliberately indifferent to Adom’s serious medical needs. We remand for further proceedings consistent with this disposition and with the concurrently filed opinion addressing Adom’s claim under the ADA. Adom shall recover costs against the state on appeal. *See* Fed. R. App. P. 39.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Adom v. California Department of Corrections and Rehabilitation, et al., No. 24-4756

SEP 8 2026

BEA, Circuit Judge, concurring in part and dissenting in part:

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I agree with the majority that the district court properly granted summary judgment in favor of Dr. Ladd and in favor of Dr. Montegrando regarding Adom's theory that Dr. Montegrando violated his rights under the Eighth Amendment when she declined to reinstate his original incontinence supplies. But I disagree with the majority's decision to allow Adom's § 1983 claim for damages against Dr. Montegrando to proceed to trial on the theory that Dr. Montegrando may have violated Adom's Eighth Amendment rights when she performed a routine muscle strength and reflex examination on Adom. Even when all reasonable factual inferences are drawn in Adom's favor, neither Dr. Montegrando's decision to conduct the examination nor the way she conducted it meets the high bar for establishing an Eighth Amendment violation. I would therefore affirm the district court's decision in full. I respectfully dissent in part.

I

The following facts are undisputed. Dr. Montegrando saw Adom once on September 10, 2021, for a routine specialty follow-up visit after Adom's off-site appointment with an ophthalmologist in the community. As a standard practice of the prison, every inmate returning from an off-site medical appointment is scheduled

for a follow-up appointment with a prison doctor to ensure that the off-site doctor's treatment plan is implemented and that any prescriptions are submitted.

Dr. Montegrando decided to conduct ordinary muscle strength and reflex tests on Adom. She asked Adom to transfer from his wheelchair to an examination table in her office so that she could perform the tests. Adom refused to transfer from his wheelchair but consented to having Dr. Montegrando perform the tests while he remained seated in his wheelchair. Dr. Montegrando proceeded to administer the tests. The strength test consisted of Dr. Montegrando gently pushing against each of Adom's extended limbs, one at a time, while asking him to resist the pressure to the best of his ability. The leg reflex test involved Dr. Montegrando using a small rubber reflex hammer to tap each of Adom's legs beneath the patella to measure his reflexes.

During the examination, Adom did not ask Dr. Montegrando to stop the examination. Nor did Adom complain of any pain during the examination. Adom's medical records contain no evidence that he sought medical attention for any injuries he claimed Dr. Montegrando had caused during the September 10 examination. Dr. Montegrando did not document the strength and reflex tests in her medical report, which documented only the ophthalmology follow-up.

The following factual issues are disputed, so I draw all reasonable inferences in favor of Adom, as I must do at this stage of the proceedings. During the examination, Dr. Montegrando repeatedly used the reflex hammer to strike Adom's

leg with aggressive force and instructed him to resist her strikes on his left leg despite knowing that he could not resist because of his chronic spinal condition. Dr. Montegrando's use of force during the examination caused a sharp, stabbing pain in Adom's spine. While Dr. Montegrando was testing the strength of Adom's arms, her use of force caused one of his arms to strike part of his wheelchair, causing him pain. Dr. Montegrando's repeated strikes to Adom's legs during the examination caused his left leg to collapse onto the foot pedal of his wheelchair, resulting in "intense pain" and "abrasions" to his Achilles heel. The examination was so painful that it caused Adom to urinate involuntarily.

II

On the foregoing record, there is no genuine dispute of material fact as to whether Dr. Montegrando violated Adom's Eighth Amendment rights when she administered the reflex and strength tests.

A

As an initial matter, Adom's claim fails because he has not demonstrated that Dr. Montegrando's examination caused anything more than a *de minimis* injury.

The Supreme Court has held that "the Eighth Amendment's prohibition of 'cruel and unusual' punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force[.]" *Hudson v. McMillian*, 503 U.S. 1, 9–10 (1992). Adom has not met that standard. Adom complained of "pain" and

“abrasions.” But the undisputed evidence shows that Adom did not complain of pain during the examination and did not ask Dr. Montegrando to stop the examination. Further, Adom did not seek medical treatment for these alleged injuries in the days following Dr. Montegrando’s examination. Adom’s medical records do not document any injury or treatment related to the examination. Therefore, Adom’s claim against Dr. Montegrando fails as a matter of law because there is no reasonable basis to infer that he suffered anything more than *de minimis* injuries, as the district court properly found. *Adom v. Cal. Dep’t of Corr. & Rehab.*, No. 22-cv-07150-JSW, 2024 WL 3173294, at *4 (N.D. Cal. June 25, 2024) (“[E]ven accepting as true Plaintiff’s assertion Dr. Montegrando conducted the tests roughly, there is no evidence supporting an inference that she did so with more than *de minimis* force.”).

B

Even if we set aside Adom’s failure to demonstrate anything more than a *de minimis* injury, his claim against Dr. Montegrando still fails.

In Eighth Amendment excessive force claims, the core of a court’s inquiry is “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503 U.S. at 7 (citation modified). In the context of a prison doctor’s medical decisions, “only the unnecessary and wanton infliction of pain implicates the Eighth Amendment.” *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (citation modified). That standard is not

met here. When all reasonable factual inferences are drawn in Adom's favor, the record suggests that Dr. Montegrando performed nothing more than a standard reflex examination that she believed would serve a legitimate medical purpose. As explained below, neither Dr. Montegrando's decision to conduct the physical examination nor her execution of the examination rises to the level of an Eighth Amendment violation.

First, Dr. Montegrando's decision to conduct the strength and reflex tests was not itself "malicious[]" and sadistic[]." *Hudson*, 503 U.S. at 7. Adom emphasizes that the decision to conduct the strength and reflex tests suggested malice or sadism on Dr. Montegrando's part because she was examining Adom only as part of a follow-up to his ophthalmology appointment, a matter that is unrelated to his strength or reflexes. But Dr. Montegrando acted within her discretion in administering a "standard reflex examination" in response to concerns about Adom's documented neurological conditions. Moreover, Adom consented to the reflex examination. It is undisputed that, after experiencing the purported pain, Adom did not tell Dr. Montegrando to stop the strength and reflex examination. These tests require a doctor to use physical force to test the strength of a patient's extremities and his reflexes. Even if the examination was as forceful as Adom describes, his account does not show that Dr. Montegrando chose to conduct the examination to inflict pain. Rather, Dr. Montegrando had a legitimate medical reason to conduct the

examination (her desire to check Adom’s reflexes and muscle strength, given his age and history of stroke and other physical and neurological conditions). “A difference of opinion between a physician and the prisoner—or between medical professionals—concerning what medical care is appropriate does not amount to deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012), *overruled in part on other grounds by Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014) (en banc).

Second, the manner in which Dr. Montegrando conducted the examination did not violate the Eighth Amendment. Adom emphasizes that her treatment of him during the examination was aggressive and caused him to suffer intense pain. But even if Adom’s sworn statements that Dr. Montegrando conducted the tests roughly are accepted as true, nothing suggests that she acted “maliciously and sadistically.” *See Hudson*, 503 U.S. at 7. As discussed above, it is undisputed that Adom did not complain of pain during the examination and did not ask Dr. Montegrando to stop. Nor did Adom seek medical treatment for the purported injuries in the days after the examination. Notably, on September 13 and 17, Adom submitted “medical requests” to prison staff concerning the reinstatement of his incontinence supplies. Adom therefore knew how to seek medical treatment for any injuries Dr. Montegrando might have caused during the September 10 examination. Adom sought treatment for other matters in the days following the examination, but did not seek treatment

for the injuries that he now attributes to Dr. Montegrande. Finally, Adom’s medical records contain no evidence that he sought medical attention for any injuries he claimed Dr. Montegrande had caused during the September 10 examination.

In the context of medical treatment, “[e]ven gross negligence is insufficient to establish deliberate indifference.” *Lemire v. Cal. Dep’t of Corr. & Rehab.*, 726 F.3d 1062, 1082 (9th Cir. 2013). Even if Adom’s account of the examination is taken as true—that the pressure Dr. Montegrande applied to Adom’s extremities caused his arm and heel to strike parts of his wheelchair, and that Dr. Montegrande aggressively struck Adom’s leg with the reflex hammer—this conduct demonstrates, at most, that Dr. Montegrande performed an ordinary physical examination in a negligent or grossly negligent manner. That is insufficient to establish an Eighth Amendment violation. *See Lemire*, 726 F.3d at 1082. In sum, even after all reasonable inferences are drawn in Adom’s favor on issues of disputed fact, he has not carried his burden to demonstrate that Dr. Montegrande acted “maliciously and sadistically to cause harm,” *Hudson*, 503 U.S. at 7, or that the examination amounted to the “unnecessary and wanton infliction of pain.” *Wilson*, 501 U.S. at 297 (citation omitted).

* * *

For the foregoing reasons, I would affirm in full the district court’s order granting summary judgment in favor of all Defendants. I therefore respectfully dissent in part.