No. 20-1734

In The
Supreme Court of the United States

WASEEM DAKER,
Petitioner,
v.
COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

WASEEM DAKER
Petitioner, *pro se*

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QUESTIONS PRESENTED

Another prisoner filed a civil action pursuant to 42 U.S.C. § 1983, challenging his placement on the Georgia Department of Corrections ("GDC") Tier II segregation program. Petitioner, also a GDC prisoner on Tier II segregation, moved to intervene in the action. The district court denied intervention, citing Eleventh Circuit precedent holding that the Prison Litigation Reform Act of 1995 ("PLRA") filing fee provision, 28 U.S.C. § 1915(b), requires each prisoner to file his own action. The Eleventh Circuit dismissed Petitioner's appeal, holding the same. The questions presented are as follows:

I. Whether the Prison Litigation Reform Act requires each prisoner filing a lawsuit to pay a separate filing fee.

II. Whether the Prison Litigation Reform Act repealed Fed.R.Civ.P. 20(a) regarding joinder or otherwise requires each prisoner filing a lawsuit to file a separate lawsuit.

There is a three-way split among the federal Courts of Appeals on these two questions. The Sixth Circuit has answered both questions "no." The Eleventh Circuit has answered both questions "yes." The Third and Seventh Circuits have taken a middle approach, answering the first question "yes," but the second question "no."

Not only does Eleventh Circuit precedent not only answer the second question "yes," but the Eleventh Circuit opinion below extended that precedent so

as to repeal not only Fed.R.Civ.P. 20(a) regarding joinder, but also Fed.R.Civ.P. 24 regarding intervention. Thus, this case also presents a third question:

III. Whether the Prison Litigation Reform Act repealed Fed.R.Civ.P. 24 regarding intervention or otherwise requires each prisoner to file a separate lawsuit.

The Eleventh Circuit stands alone in answering both the second and third questions "yes."

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Adams, Austin, Respondent;

Boyett, John, Respondent;

Brooks, Nathan, Respondent;

Bryson, Homer, Respondent;

Cox, Kenny, Respondent;

Cox, Anthony, Respondent;

Daker, Waseem, Petitioner;

Gandy, Kasim, Respondent;

Gramiak, Tom, Respondent;

Johnson, Edwina, Respondent;

Lowe, Kimberly, Respondent;

Steedly, William, Respondent.

LIST OF RELATED CASES

Gandy v Gramiak, et al, No. 5:16-CV-00044, U. S. District Court for the Southern District of Georgia. Judgment entered October 31, 2017.

Daker v Warden, et al, No. 17-15228, U. S. Court of Appeals for the Eleventh Circuit. Judgment entered Mar. 25, 2020.

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STATUTES:

PETITION FOR A WRIT OF CERTIORARI

Waseem Daker respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in *Daker v. Warden*, No. 17-15228.

OPINIONS BELOW

The Opinion of the Court of Appeals is unpublished, but reported at *Daker v. Warden*, Nos. 17-15228, 799 FedAppx 790 (11th Cir. Mar. 25, 2020).

JURISDICTION

The Court of Appeals dismissed Petitioner's appeal from the denial of intervention on March 25, 2020. *Appendix A.* The Court of Appeals denied a petition for rehearing on December 15, 2020. *Appendix E.* On March 19, 2020, this Court entered its COVID-19 Order extending the deadline to file Petition for Writ of Certiorari for 150 days, or until May 14, 2020. 589 U.S. ___. On April 15, 2020, this Court entered its COVID-19 Order holding that "a single paper copy of the document, formatted on 8½ x 11 inch paper, may be filed." 589 U.S. ___. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves Title 28, United States Code ("U.S.C.") § 1914, which provides:

> (a) The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5.
>
> (b) The clerk shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States.

This case involves Title 28, United States Code ("U.S.C.") § 1915, which provides in pertinent part:

> (a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affi-

davit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor....

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement...

***

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee...

***

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason

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

This case involves Federal Rule of Civil Procedure 20(a), which provides in pertinent part:

> (a) PERSONS WHO MAY JOIN OR BE JOINED.
>
> (1) Plaintiffs. Persons may join in one action as plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative

> with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action.

This case involves Federal Rule of Civil Procedure 24, which provides in pertinent part:

> (a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:...
>
> (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

STATEMENT OF THE CASE

On June 9, 2016, Kasim Gandy, a prisoner in the custody of the Georgia Department of Corrections ("GDC"), brought this action pursuant to 42 U.S.C. § 1983, in the District Court for the Southern District of

Georgia against Respondent GDC Commissioner Homer Bryson, Respondent Ware State Prison Warden Tom Gramiak, and other officials challenging his placement on the GDC Tier-II Segregation Program on due process grounds.

On February 3, 2017, Petitioner Waseem Daker, also a prisoner in the custody of the GDC, moved to intervene in Gandy's lawsuit, challenging his placement on Tier II segregation on due process grounds as well.

On February 28, 2017, the magistrate judge denied Petitioner's motion for intervention, holding that his intervention was barred by the Prison Litigation Reform Act ("PLRA") filing-fee provision, 28 U.S.C. § 1915(b). *Appendix C.*

Petitioner timely moved for reconsideration.

On June 16, 2017, the magistrate judge denied Petitioner's motion for reconsideration for intervention. *Appendix D.*

Petitioner timely moved for reconsideration.

On October 31, 2017, the district court denied Petitioner's Motion for Intervention. *Appendix B.*

Petitioner timely appealed.

The Eleventh Circuit opinion dismissed the appeal holding that the denial of intervention was correct. *Appendix A.* Petitioner unsuccessfully sought rehearing, which the Eleventh Circuit denied on December 15, 2020. *Appendix E.*

REASONS FOR GRANTING THE WRIT

I. There is a conflict between the federal Courts of Appeals.

There is a three-way split among the federal Courts of Appeals on the questions presented.

At one end of the spectrum, the Sixth Circuit held that, in multiple-prisoner-plaintiff cases, "each prisoner should be proportionally liable for any fees and costs that may be assessed. Thus, any fees and costs that the district court... may impose shall be equally divided among all the prisoners." *In Re Prison Litigation Reform Act*, 105 F3d 1131, 1137-38 (6th.Cir.1997). *Talley-Bey v. Knebl*, 168 F3d 884, 887 (6th.Cir.1999). Under this approach, prisoners joining in a lawsuit need neither file separate lawsuits not pay separate full filing fees.

At the other of the spectrum, the Eleventh Circuit held that prisoners not only must each pay a separate filing fee, but must also file separate lawsuits. *Hubbard v. Haley*, 262 F3d 1194, 1197-98 (11th.Cir.2001), the plaintiff and 17 other state prisoners filed a *pro se* civil rights action against several prison officials. *See* 262 F.3d at 1195. The district court dismissed the case, finding that each plaintiff had to file a separate complaint and pay a separate filing fee. *See id.* The Eleventh Circuit held that, in the context of joinder under Rule 20, the PLRA clearly and unambiguously requires that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee."

Id. at 1197 (quotation marks omitted). Additionally, the Eleventh Circuit held that the Congressional purpose in promulgating the PLRA—to deter frivolous civil actions brought by prisoners by requiring each individual to pay the full filing fee—supported an interpretation that each prisoner in this case pay the full filing fee. *See id.* at 1197-98. The Court also held that the PLRA repealed the Rules Enabling Act, as expressed in Rule 20, to the extent that it conflicted with the PLRA. *See id.* at 1198 (citing *Mitchell v. Farcass*, 112 F.3d 1483, 1489 (11th Cir. 1997) ("A statute passed after the effective date of a federal rule repeals the rule to the extent that it actually conflicts."). Thus, the Court held that, "[b]ecause the plain language of the PLRA requires that each prisoner proceeding IFP pay the full filing fee," the district court had properly dismissed the multi-plaintiff action. *Id.*

In the middle of the spectrum lie the Third and Seventh Circuits. The Seventh Circuit held both considered and rejected the Eleventh Circuit's holding in *Hubbard* that the PLRA overturns the joinder rules of Fed.R.Civ.P. 20, which is unsupported by statutory language or history, holding that there is no reason to believe Congress intended in the PLRA to repeal the joinder rules. *Boriboune v. Berge*, 391 F3d 852, 854-55 (7th.Cir.2004). Thus, the Seventh Circuit held that PLRA does not prohibit multiple-prisoner lawsuits, but does require each prisoner to pay a separate filing fee. *Id*, 391 F3d at 854-56.

Like the Seventh Circuit, the Third Circuit held both considered and rejected the Eleventh Circuit's holding in Hubbard that the PLRA overturns the joinder rules of Fed.R.Civ.P. 20, which is unsupported by

statutory language or history, holding that there is no reason to believe Congress intended in the PLRA to repeal the joinder rules. *Hagan v. Rogers*, 570 F3d 146, 154-55 (3rd.Cir.2009); Thus, the Third Circuit held that PLRA does not prohibit multiple-prisoner lawsuits, but does require each prisoner to pay a separate filing fee. *Id*, 570 F3d at 154-56.

There is a three-way split among the federal Courts of Appeals on the questions presented. Moreover, both the district court and the Eleventh Circuit below decided this case on purely legal grounds, making this case a ripe opportunity to resolve these conflicts.

II. The Eleventh Circuit opinion conflicts with this Court's prior decisions.

This Court's Rule 10(c) provides that one factor this Court considers in deciding whether to grant certiorari is whether "United States court of appeals has decided... has decided an important federal question in a way that conflicts with relevant decisions of this Court." That standard is met here.

In *Jones v. Bock*, 549 US 199, 212-16, 220-24 (2007), this Court "explained that courts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns." 127 SC At 219. Thus, the Court held that "the PLRA's screening requirement does not—explicitly or implicitly—justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself." 127 SC at 920. Thus, the Court also considered the PLRA exhaustion requirement, 42 USC §

1997e(a), and 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." 127 SC at 921. "Given that the PLRA does not itself require plaintiffs to plead exhaustion, such a result 'must be obtained by the process of amending the Federal Rules, and not by judicial interpretation.'" 127 SC at 922 (citation omitted). There is nothing in the PLRA that says anything about repealing Fed.R.Civ.P. 20(a)(1), regarding joinder, so as to bar multiple-prisoner lawsuits, as both the Seventh and Third Circuits held, in rejecting the Eleventh Circuit's approach in *Hubbard. Boriboune*, 391 F3d at 854-56; *Hagan*, 570 F3d at 154-56.

In *Ross v. Blake*, 578 US __, 136 SC 1850, 1857 n.1, 195 LE2d 117 (2016), this Court again applied that same principle, emphasizing that "adherence to the PLRA's text runs both ways: The same principle applies regardless of whether it benefits the inmate or the prison." 578 US at __, 136 SC at 1857 n.1.

III. The Eleventh Circuit opinion has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

This Court's Rule 10(a) provides that one factor this Court considers in deciding whether to grant certiorari is whether "a United States court of appeals has entered a decision in conflict with the decision... has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for

an exercise of this Court's supervisory power." That standard is met here.

In its opinion below, the Eleventh Circuit not only applied its *Hubbard* decision holding that the PLRA overturns the joinder rules of Fed.R.Civ.P. 20 so as to prohibit multiple prisoners from joining in a single action, but it also extended that holding so as to hold that the PLRA also overturns the intervention rules of Fed.R.Civ.P. 24. No other Circuit has taken such an extreme interpretation of the PLRA.

IV. The issue presented is of exceptional public importance.

The issue presented is of exceptional public importance because the Eleventh Circuit's holding undermines one of the congressional intents of the PLRA, which is to *reduce* prisoner litigation. The Eleventh Circuit's decisions in *Hubbard* and in its opinion below have the opposite effect, by *increasing* prisoner lawsuits by forcing them to file multiple lawsuits where only one is necessary.

Hubbard is a case in point. In *Hubbard*, 18 prisoners attempted to join under Rule 20 as plaintiffs in a single action. *Hubbard* required them to file 18 separate lawsuits instead of just the one, undermining the purpose of the PLRA.

The Eleventh Circuit opinion below is also a case in point. Here, Petitioner attempted to intervene under Rule 24 in another prisoner's lawsuit. The Eleventh Circuit required him to file a second, separate lawsuits, instead of permitting him in intervene in just the one, also undermining the purpose of the PLRA.

Moreover, both the district court and the Eleventh Circuit below decided this case on purely legal grounds, making this case a ripe opportunity to resolve these questions.

Thus, this Court should grant the writ in this matter of public interest.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the petition for a writ of certiorari be granted.

Respectfully Submitted,

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