No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER VARNER,

Petitioner,

v.

STAN SHEPARD, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under 42 U.S.C. § 1997e(a), an incarcerated person cannot bring a prison-conditions action without first exhausting "such administrative remedies as are available." A prison grievance process can be an available remedy, but only if it offers "relief for the action complained of." *Ross v. Blake*, 578 U.S. 632, 642 (2016) (quoting *Booth v. Churner*, 532 U.S. 731, 738 (2001)).

In Georgia, prison officials lack discretion to rule on grievances alleging excessive force. Instead, those grievances are automatically closed and forwarded to an internal-investigation unit. The grievance is not adjudicated, and the complainant is not informed of the outcome of the investigation. The same internal investigation may be initiated outside of the grievance procedure, including by a family member's complaint to certain prison officials.

This case presents two discrete questions:

1. Whether, under 42 U.S.C. § 1997e(a), a prison grievance procedure is an available administrative remedy when it automatically refers a grievance for an internal investigation and terminates without adjudicating the prisoner's complaint.

2. Whether 42 U.S.C. § 1997e(a) requires a prisoner to use a prison's grievance procedure when a grievance can only result in an internal investigation that has already been initiated by other means in accordance with the prison's own policies.

PARTIES TO THE PROCEEDING

Petitioner Christopher Varner was the plaintiff in the district court and the appellant in the court of appeals below.

Respondents Stan Shepard, Jerry Beard, Antonio Binns, Lenon Butler, Julian Greenaway, Rodgerick Nabors, and Justin Washington were the defendants in the district court and the appellees in the court of appeals below.

No corporation is a party.

RELATED PROCEEDINGS

1. *Griggs v. Holt*, No. 1:17-CV-89, United States District Court for the Southern District of Georgia. Order granting motion to dismiss entered October 24, 2018. Judgment entered April 29, 2019.

2. *Varner v. Shepard*, No. 19-12048, United States Court of Appeals for the Eleventh Circuit. Judgment entered August 31, 2021. Rehearing denied October 8, 2021.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Christopher Varner respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is available at 11 F.4th 1252 and is reproduced in the appendix hereto at 1a–10a. The opinion of the District Court for the Southern District of Georgia dismissing Christopher Varner's claims is unpublished but is available at 2018 WL 5283448 and is reproduced in the appendix hereto at 11a–21a. The opinion of the District Court for the Southern District of Georgia entering judgment against Varner is unpublished but is available at 2019 WL 1903402 and is reproduced in the appendix hereto at 22a–25a.

JURISDICTION

The Court of Appeals entered its judgment on August 31, 2021 (App. 1a) and denied a timely petition for rehearing on October 8, 2021 (App. 26a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves 42 U.S.C. § 1997e(a), which provides, "No 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." The text of 42 U.S.C. § 1997e is reproduced in the appendix hereto at 27a–28a.

STATEMENT OF THE CASE

This petition concerns the dismissal of Petitioner Christopher Varner's complaint for failure to exhaust administrative remedies. The relevant facts and procedural history are discussed below.

A. Assault on Christopher Varner

In early 2014, Christopher Varner was assigned to Augusta State Medical Prison, a facility that specializes in providing medical and mental health services. (Dkt. 7 at 12, 15.) Varner was assigned to this facility due to his special medical needs, which included schizophrenia, bipolar disorder, organic brain damage, and diabetes. (Dkt. 7 at 13–14.)

On February 13, 2014, Varner was standing in line waiting for medication when he got into an altercation with a group of correctional officers. (Dkt. 7 at 18–19.) One of the officers grabbed Varner and slammed him into a wall; in response, Varner allegedly struck the officer. (Dkt. 7 at 19.) The group of officers then forced Varner into small vestibule between a hallway and an exterior door. (Dkt. 7 at 19.) The officers choked Varner until he lost consciousness. (Dkt. 7 at 19.) When Varner awoke, he was on the floor, handcuffed behind the back, with the officers standing above him and blood running from his nose and mouth. (Dkt. 7 at 19.)

By that point, Varner was fully compliant and restrained. (Dkt. 7 at 19.) The officers nonetheless began punching, kicking, and stomping Varner's head and body. (Dkt.7 at 19.) Next, they picked Varner up off the ground and walked him to an elevator near the prison's medical unit. (Dkt. 7 at 20.) Once inside the elevator,

they threw Varner to the floor and rode the elevator up and down while punching, kicking, and stomping him. (Dkt. 7 at 20.) One officer discharged a chemical agent in Varner's face while another struck Varner's body and head with an expandable metal baton. (Dkt. 7 at 20.) The officers then took Varner off of the elevator and led him to the prison's medical unit, where they threw him face down on the floor and continued to beat him. (Dkt. 7 at 21.) One officer kicked Varner in the face while another encouraged the first to knock Varner's teeth out. (Dkt. 7 at 21.)

The assault left Varner with extensive injuries, including contusions, swelling, and lacerations to his face and body. (Dkt. 68-1 at 2-3; Dkt. 68-2 at 2–4.) He could not see out of his left eye, could not open his mouth more than half an inch, and had many knots on his head. (Dkt. 68-2 at 4.)

B. Internal Investigation

On the same day that the assault occurred, Varner's father received a telephone call telling him to visit Varner "right away" because Varner had been "jumped on by guards and was all broken up." (App. 53a.) Varner's father called the warden's office that day to complain. (App. 53a–54a.) He said that he had heard that Varner had been badly beaten, and that he intended to take legal action if that were true. (App. 53–54a.)

When Varner's father called the warden's office to complain, he was doing exactly what the Georgia Department of Corrections advises loved ones to do when a family member has been assaulted. In guidance on its official website, the Department advises people to "immediately report any assaults" to one of three

officials: "the counselor, Deputy Warden, and/or Warden." (App. 51a.) The guidance specifically states that "family members may contact one of the above staff" on behalf of a prisoner who has been an assault victim. (App. 51a.)

The warden, Stan Shepard, contacted the Georgia Department of Corrections Internal Investigation Unit (IIU) that day to request an internal investigation into the assault. (Dkt. 68-8 at 2; *see* Dkt. 77-3 at 3.) The IIU is responsible for investigations "concerning activities of and about inmates, probationers, facilities, and employees." Ga. Comp. R. & Regs. § 125-1-2.11 (2003). Under Georgia law, the IIU's "reports and intelligence data" are "classified as confidential state secrets and privileged" unless declassified by the Department's commissioner. O.C.G.A. § 42-5-36(b) (2013). The IIU does not inform prisoners of the results of its internal investigations. (Dkt. 7 at 43.)

Shortly after the warden's referral to the IIU, three of the officers who assaulted Varner resigned from the Georgia Department of Corrections in lieu of termination. (App. 16a.) They were later prosecuted by the United States under 18 U.S.C. § 242 for depriving Varner of his constitutional rights. (App. 16a.)

C. Georgia's Grievance Procedure

Under the prison's policies, an IIU investigation is the only mechanism that can inquire into an excessive-force incident. Although the Georgia Department of Corrections maintains a statewide grievance procedure to adjudicate many kinds of complaints (App. 29a), excessive-force grievances are not cognizable in the ordinary grievance process.

If an incarcerated person submits a grievance alleging "physical force involving non-compliance with Department policies," that action "automatically end[s] the grievance process." (App. 38a.) "These grievances are automatically forwarded" to the IIU "for review and whatever action is deemed appropriate." (App. 38a.) Referring a grievance to the IIU "is the final action that will be taken on the [g]rievance and terminates the grievance procedure." (App. 38a.) Because the referral is automatic, it provides the complainant no information about whether prison officials deem the grievance valid or not. The complainant receives only a computer-generated notice that the grievance was forwarded to the IIU, and there is no way to appeal that referral to get a merits ruling on the grievance. (App. 38a.) The text of the automatic response states,

> [Y]our grievance has been forwarded to the Georgia Department of Corrections Internal Investigations Unit on [date] for review. *That Unit will determine what action is appropriate*. As a result, this letter serves as the formal response to your grievance and effectively *closes your grievance*.

(App. 43a (emphasis added).) At that point, the grievance process is over. No further information is provided to the complainant about whether the complaint is deemed valid or what remedial action, if any, is taken by prison officials.

D. Proceedings Below

Varner sued several prison officers seeking damages under 42 U.S.C. § 1983 for violations of his Eighth and Fourteenth Amendment rights. (Dkt. 7.) The officers responded by moving to dismiss Varner's claims in their entirety for failure to exhaust administrative remedies in accordance with 42 U.S.C. § 1997e(a). (Dkt.

29.) The officers' argument for dismissal was that Varner had failed to file a grievance concerning the beating. (Dkt. 29 at 7–8.) In support of their motion, the officers filed a prison counselor's declaration confirming that a grievance alleging excessive force would not have been adjudicated through the grievance process. Instead, a grievance would have been automatically referred to the IIU and closed:

> The submission of a grievance alleging a use of physical force involving non-compliance with Department policies automatically ended the grievance process. This type of grievance was automatically forwarded to [the] Internal Investigations Unit for review. The referral of a grievance to the Internal Investigations Unit was a final action that would be taken on the grievance and terminated the grievance process.

(App. 46a.)

In response, Varner raised several arguments against dismissal, two of which are relevant to this petition. First, Varner argued that the grievance procedure did not constitute an available administrative remedy. (Dkt. 68 at 13–16.) Second, he argued that to the extent that the IIU's review process counted as an administrative remedy, it had been properly invoked by Varner's father calling the warden and the warden initiating an IIU investigation. (Dkt. 68 at 17–18.)

The district court dismissed Varner's claims in their entirety (App. 20a) and entered judgment against Varner (App. 25a). The court of appeals affirmed. (App. 2a.) The panel majority reasoned that the grievance procedure provided relief "in the form of forwarding the excessive force complaint to the IIU." (App. 5a.) The panel majority recognized that "prison officials have no discretion" to do anything other than "forward the complaint to the IIU and terminate the grievance," but

concluded that the resulting "investigation of the complaint by the IIU" meant that "all excessive force grievances result in some relief, even if not the relief requested by the inmate." (App. 5a.) Having concluded that an automatic referral to the IIU constituted relief, the panel majority held that Varner could not exhaust without filing a grievance, even though it was undisputed that the IIU had ultimately investigated the incident underlying Varner's complaint. (App. 7a–8a.)

In dissent, Judge Pryor distinguished between the "further *process*" afforded by an IIU investigation and "*substantive relief* on the allegations in the complaint." (App. 9a.) Judge Pryor observed that "[a]n administrative officer who automatically forwards the complaint to the IIU lacks any authority to affect any substantive relief whatsoever." (App. 10a.) For that reason, Judge Pryor concluded that Georgia's grievance process is not an "available administrative remedy." (App. 10a.)

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant Review to Clarify That Automatically Referring a Grievance for Further Investigation Is Not an Available Administrative Remedy Under 42 U.S.C. § 1997e(a).

The court of appeals erred in holding that automatically forwarding a complaint for an internal investigation constitutes an available administrative remedy under 42 U.S.C. § 1997e(a). That holding conflicts with the relevant decisions of this Court and warrants review to ensure uniformity in lower courts' interpretation and application of § 1997e.

In *Booth v. Churner*, 532 U.S. 731 (2001), this Court explained "[t]he meaning of the phrase 'administrative remedies . . . available,'" *id.* at 736. At issue

in *Booth* was whether a prisoner has an available administrative remedy where "the administrative process has authority to take some action in response to a complaint, but not the remedial action that an inmate demands to the exclusion of all other forms of redress." *Id.* Specifically, the plaintiff in *Booth* wanted monetary damages, which were unavailable through the relevant grievance process. The question presented was "whether an inmate seeking only money damages must complete a prison administrative process that could provide *some sort of relief* on the complaint stated, but no money." *Id.* at 734 (emphasis added).

Booth held that § 1997e(a)'s exhaustion requirement focuses on "the procedural avenue leading to some relief," and not the "specific relief obtainable at the end of a process of seeking redress." *Id.* at 738. Accordingly, "an inmate must exhaust irrespective of the forms of relief sought and offered through administrative avenues." *Id.* at 741 n.6. But the Court tempered that holding with a clear limiting principle. The Court explained that although the exhaustion requirement focuses on "processes, not forms of relief," *id.* at 739, procedures alone do not provide an available administrative remedy. This is because "some redress for a wrong is presupposed" by the term "administrative remedies." *Id.* at 736. A process is not an available administrative remedy within the meaning of § 1997e(a) unless it offers the prospect of "responsive action" by officials who have the "authority to act on the subject of the complaint," *id.* at 735 n.4. A process in which officials lack the discretion to rule in the prisoner's favor and take responsive action to rectify the problem leaves the prisoner with "nothing to exhaust." *Id.*

In *Ross v. Blake*, 578 U.S. 632 (2016), this Court went further in distinguishing bare procedures from true administrative remedies. In *Ross*, the plaintiff, a Maryland prisoner, had been assaulted by officers but had not used the prison's grievance procedure to complain about the matter. *Id.* at 636. However, the prison system's "Internal Investigations Unit (IIU)," which was vested with "authority to investigate allegations of employee misconduct, including the use of 'excessive force,'" had investigated the assault. *Id.* (quoting Code of Md. Regs., tit. 12, § 11.01.05(A)(3) (2006)). The plaintiff in *Ross* argued that he thought the IIU's investigation "served as a substitute" for the standard grievance process and that this reasonable mistake should have excused § 1997e(a)'s exhaustion requirement. *Id.* at 637.

Ross rejected a "freewheeling approach" that would allow undefined "special circumstances" to excuse a prisoner's failure to exhaust. *Ross*, 578 U.S. at 635, 640-42. Thus, the *Ross* plaintiff's mistaken belief about whether he needed to file a grievance could not, standing alone, excuse his failure to file a grievance. *Id.* at 641-42. But the Court did not stop there. The Court instead held that the prisoner's failure to file a grievance was not dispositive because the record was unclear about what was available through the "standard grievance procedures." *Id.* at 648. Specifically, there was evidence that although prisoners could formally file grievances regarding excessive-force incidents, doing so might not result in remedial action, because the complaints would be dismissed if they were "referred to the [IIU]" for investigation, or if they involved an incident already being investigated by

the IIU. *Ross*, 578 U.S. at 647 (quoting Lodging of Petitioner 15). This Court did not resolve the factual dispute in *Ross* over what was available through the grievance process. However, in remanding the case for further proceedings, the Court noted that a prison system would not provide an administrative remedy if the office handling prisoner grievances "disclaims the capacity to consider" them on the merits. *Id.* at 643.

Under the holdings of *Booth* and *Ross*, the phrase "administrative remedies . . . available" cannot plausibly cover the grievance procedure in this case. Automatically diverting a prisoner's complaint to internal investigators and closing it is not a "means of enforcing a right or preventing or redressing a wrong." *Booth*, 532 U.S. at 738 (quoting *Black's Law Dictionary* 1296 (7th ed. 1999)). Rather, an investigation provides only additional process "to observe or study" a matter. *Webster's Third New Int'l Dictionary*, 1189 (1993); *see, e.g.*, *Brogan v. United States*, 522 U.S. 398, 402 (1998) (noting that the "purpose of an investigation" is "to uncover the truth"). The product of the investigative process may inform the analysis of whether there is a problem and how to resolve it, but the investigation itself does not provide "relief to aggrieved inmates." *Ross*, 578 U.S. at 643. At best, it merely validates what the complainant already alleges to be true.

Moreover, *Ross v. Blake* implicitly rejected the notion that referring a prisoner's grievance for an internal investigation could turn an otherwise inadequate grievance procedure into an administrative remedy. It was undisputed in *Ross* that regardless of whether grievances alleging excessive force could be

adjudicated on the merits through the "standard grievance procedures," a grievance alleging excessive force could still be referred to Maryland's IIU for investigation. *Ross*, 578 U.S. at 648. Specifically, a state prison regulation cited in *Ross*, *see id.* at 636, provided that allegations "of excessive force by an employee" were to be reported to the IIU, and that prison officials responsible for the grievance process could take steps to notify the IIU if those allegations were "discovered . . . as part of the administrative remedy procedure." Code of Md. Regs., tit. 12, § 11.01.05(A)(3), (B) (2006). If referring a grievance for an internal investigation, without more, qualified as an available administrative remedy, the plaintiff in *Ross* would have been unable to proceed with his lawsuit, since it was undisputed that he could have filed a grievance and that it would have been possible for the grievance to be referred to the IIU, regardless of what else might have happened to it. But this Court remanded the case for further proceedings to determine whether "Maryland's *standard grievance procedures* potentially offer[ed] relief," *Ross*, 578 U.S. at 648 (emphasis added), implicitly rejecting the notion that merely referring a grievance for investigation constitutes an available administrative remedy under § 1997e(a).

Although the plain meaning of the term "remedies" and the holding of *Ross* provide more than enough reason to reverse the court of appeals' decision, the purposes underlying § 1997e(a)'s exhaustion requirement reinforce the conclusion that an investigative referral is not an administrative remedy. As this Court has explained, exhaustion is supposed to give prison officials an opportunity to address complaints "before being subjected to suit," avoid litigation to the extent that

complaints are "satisfactorily resolved" by prison officials, and create a "useful record" of an incident for courts and parties to use in the event that litigation occurs. *See Jones v. Bock*, 549 U.S. 199, 219 (2007); *Porter v. Nussle*, 543 U.S. 516, 525 (2002). Yet Georgia's grievance procedure serves none of these functions with respect to excessive-force complaints. The grievance process "terminates" automatically at the moment a complaint is forwarded to the IIU for investigation (App. 38a), meaning that prison officials lack an opportunity to address the complaint before the grievance process ends and the prisoner is entitled to sue. Similarly, prisoners cannot know whether their excessive-force complaints have been resolved satisfactorily, because the IIU does not "inform prisoners of the outcome" (Dkt.7 at 43). And there is no assurance of an administrative record to use in litigation since an internal investigation could run parallel to federal litigation.[1]

That Georgia's grievance process does not result in a decision also means that it lacks a fundamental characteristic of administrative remedies. This Court's cases interpreting § 1997e(a) have recognized that the administrative remedies contemplated by the statute are "adjudicative" in nature. *See, e.g.*, *Woodford v. Ngo*, 548 U.S. 81, 91 (2006); *see also, e.g.*, *Ross*, 578 U.S. at 647 (recognizing grievance process should produce "a ruling on the merits"). And it is generally understood that "[a]n administrative adjudication, regardless of how formal, results

[1] In addition, there is no guarantee that the report of an IIU investigation would be available for use in litigation. The IIU's reports and records are "classified as confidential state secrets and privileged" under Georgia law, O.C.G.A. § 42-5-36(b), and could be obtained only by a court order or declassification decision by the Georgia Department of Corrections commissioner, *id.*

in some form of 'order.'" Charles H. Koch, Jr. & Richard Murphy, 2 Administrative Law and Practice § 5:69 (3d ed. 2021). The lack of such a ruling on excessive-force complaints in Georgia's grievance process is a further reason to conclude that the process is not an administrative remedy within the meaning of § 1997e(a).[2]

The court of appeals attempted to distinguish *Ross v. Blake* on two grounds, neither of which withstands scrutiny. First, the court of appeals understood *Ross* to involve a grievance process that would proceed normally unless "an IIU investigation was already in progress," in which case the grievance would be dismissed. (App. 5a.)[3] By contrast, the court of appeals held, Georgia prison officials refer grievances to the IIU "regardless of whether an IIU investigation is already pending." (App. 5a.) As noted above, however, it was undisputed in *Ross* that a prison regulation specifically provided for referring excessive-force grievances to the IIU. *See* Code of Md. Regs., tit. 12, § 11.01.05(B) (2006). If that investigative referral could constitute redress for a wrong, then there would be been no need for a remand in *Ross* to determine whether the "standard grievance procedures

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[2] Relatedly, exhaustion traditionally requires a would-be litigant to give an agency or tribunal "an opportunity to act" on a claim before filing suit. *Rose v. Lundy*, 455 U.S. 509, 515 (1982). This protects agencies "from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way." *National Park Hospitality Ass'n v. Department of Interior*, 538 U.S. 803, 807-08 (2003) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967)). But the grievance process at issue in this case produced no decision, provided the complainant with no information about the outcome of the investigation, and did not notify the complainant when the investigation had concluded. These characteristics confirm that the grievance process here was not designed to function as an administrative remedy that could be exhausted in any ordinary sense.

[3] Although largely immaterial to this petition, the court of appeals likely misapprehended the facts of *Ross*. The *Ross* Court's description of the Maryland grievance process suggests that, at least in some cases, grievances may have spurred an IIU investigation that was not already in progress, and then been dismissed after the IIU investigation began. For example, *Ross* quotes an example in which "no further action would be taken through the ARP process because *the matter had been referred* to the [IIU]." *Ross*, 578 U.S. at 647 (Lodging of Petitioner 15).

potentially offer[ed] relief." *Ross*, 578 U.S. at 648.

The court of appeals next attempted to distinguish *Ross* on the ground that grievances in *Ross* were deemed "dismissed" for procedural reasons, whereas Georgia's grievances are automatically "terminated." (App. 5a.)[4] But that distinction makes no practical difference. The substance of the prison system's response in *Ross* is substantively identical to the response that a Georgia prisoner gets when a grievance is terminated, as illustrated by the following examples:

Grievance Response in *Ross v. Blake*	**Grievance Response in Georgia**
"Your Request for Administrative Remedy has been received and is hereby dismissed. This issue has been assigned to the Division of Correction's Internal Investigative Unit (Case # 07–35–010621I/C), and will no longer be addressed through this process."[5]	"[Y]our grievance has been forwarded to the Georgia Department of Corrections Internal Investigations Unit . . . for review. That Unit will determine what action is appropriate. As a result, this letter serves as the formal response to your grievance and effectively closes your grievance."[6]

There is no meaningful basis for distinguishing the facts of this case from facts that *Ross* held would provide no remedy through the grievance process.

In short, the decision of the court of appeals conflicts with the statutory text,

[4] The court of appeals reasoned that dismissing a grievance would "bar the inmate from bringing a civil suit." (App. 5a.) However, there was no evidence in *Ross* that prisoners were barred from litigation when their grievances were rejected. Although the PLRA requires prisoners to comply with "critical procedural rules," *Woodford*, 548 U.S. at 91, federal courts would not treat a grievance as procedurally defaulted where the prison dismissed the grievance through no fault of the prisoner, *see, e.g.*, *Gladhill v. Shearin*, No. CCB-08-3331, 2011 WL 1103036, at *6 (D. Md. Mar. 22, 2011) (case proceeded to trial despite grievance being "administratively dismissed" following referral to IIU); *Harris v. Cole*, No. RDB-09-2600, 2010 WL 3732096, at *1 n.6 (D. Md. Sept. 3, 2010) (same).

[5] *Ross*, 578 U.S. 632 (quoting Lodging of Respondent 1).

[6] (App. 43a.)

the purposes of exhaustion, and this Court's decisions in *Booth* and *Ross*. This Court should grant a writ of certiorari and reverse the decision below.

II. The Court Should Also Grant Review to Clarify That a Grievance Is Unnecessary Where an Administrative Process Can Be, and Has Been, Invoked by Other Means in Accordance with Prison Rules.

The decision of the court of appeals also created a conflict with this Court's decisions when it held that the IIU investigation initiated by the warden in this case could not satisfy § 1997e(a)'s exhaustion requirement. (App. 7a–8a.) The court of appeals acknowledged that an IIU investigation is "the only relief that Varner could have received" and that, because an IIU investigation in fact occurred, a ruling in Varner's favor is "consistent with the policy reasons . . . underlying exhaustion requirements." (App. 7a.) However, the court held that an IIU investigation initiated by means other than a grievance could not constitute exhaustion under the text of § 1997e(a) because, in the court's view, "Congress established a bright line prerequisite for a suit by an inmate—in this case, the filing of a grievance pursuant to and in compliance with the process set forth in GDC's Handbook." (App. 7a.)

The court of appeals' conclusion that "Congress established a bright line" grievance requirement in § 1997e conflicts with the statutory text and this Court's decisions. Specifically, this Court held in *Jones v. Bock*, 549 U.S. 199 (2007), that "it is the prison's requirements, and not [§ 1997e], that define the boundaries of proper exhaustion," *id.* at 218 (emphasis added).[7] Applying that rule in *Jones*, this

[7] Indeed, the statute speaks of exhausting "administrative remedies" generically, 42 U.S.C. § 1997e(a), and refers to "grievance procedure[s]" only to make clear that "[t]he failure of a State to adopt or adhere

Court rejected extratextual exhaustion rules that would have, among other things, permitted suit "only against defendants who were identified by the prisoner in his grievance." *Jones*, 549 U.S. at 202. This Court held that because "the grievance process itself" did not require prisoners to name all potential defendants, a "rule imposing such a prerequisite to proper exhaustion is unwarranted." *Id.* at 218.

In this case, Georgia's prison rules provided that the IIU's investigators, and not officials in the grievance process, would investigate complaints of excessive force and take "whatever action is deemed appropriate." (App. 38a.) The prison's rules also provided that complaints of excessive force could be reported to prison officials by "family members" (App. 51a), which could result in an IIU referral just like a grievance (*see* Dkt.68-16 at 5-6). As the court of appeals acknowledged, those steps were followed in this case. "Varner's parents each complained to ASMP almost immediately after Varner was beaten" (App. 6a), and "a referral to the IIU actually occurred" without the need for a grievance (App. 6a). Thus, as in *Jones*, the "prison's requirements" for referring an excessive-force complaint to the IIU were properly complied with, which is all § 1997e(a) requires. *Jones*, 549 U.S. at 218.

The court of appeals' creation of a "bright line" statutory requirement to file a grievance, where Georgia's prisons do not impose such a rule, violates the central holding of *Jones*. This Court should grant certiorari and reverse the decision below.

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to" one is not actionable under certain statutes, 42 U.S.C. § 1997e(b).

CONCLUSION

The Court should grant a writ of certiorari and reverse the judgment below.

Respectfully submitted,

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