No. 23-6142

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FATHIREE ALI, Petitioner,

v.

STEVEN SIMMONS, Correctional Officer, MICHAEL HALL, Correctional Officer; GARY STUMP, Sergeant; KEVIN ROCKWELL, Correctional Officer; ADAM COBURN, CORRECTIONAL OFFICER HICKOK; CORRECTIONAL OFFICER WAGNER
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

FATHIREE ALI
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9625 Pierce Rd.
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QUESTIONS PRESENTED

QUESTION ONE

WHEN ASSESSING WHETHER PRISON ADMINISTRATORS MADE THE GRIEVANCE PROCEDURE UNAVAILABLE BASED ON THE THREE CIRCUMSTANCES IN ROSS V BLAKE, (1) WILL ALL FINDINGS OF THWART MISCONDUCT WARRANT RELIEF TO EXCUSE EXHAUSTION, AND (2) MAY A FEDERAL COURT IMPOSE OTHER FACTORS -- PLAINTIFF'S AWARENESS OF THE GRIEVANCE PROCEDURE -- INTO THE ASSESSMENT EVEN THOUGH THE RECORD DEMONSTRATES THAT THE INMATE WAS GIVEN AND FOLLOWED THE WRONG ADVICE ON WHERE TO FILE HIS GRIEVANCE

QUESTION TWO

THE PLRA'S SILENCE ON JUDICIAL REVIEW CONCERNS A FUNDAMENTAL QUESTION OF WHETHER THE TEXT INTERPRETATION LIMITS ONLY ADMINISTRATIVE REMEDIES

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Respondents.

Petitioner Fathiree Ali respectfully petitions for writ of certiorari to review the judgment of the United State Court of Appeals for the Sixth Circuit.

OPINIONS OR JUDGMENTS BELOW

The opinions and order in this case are all unreported, including: the Sixth Circuit's June 14, 2023 order denying rehearing en banc (App. A). Appendix B is the Sixth Circuit's April 4, 2023 order and judgment which affirmed the district court's judgment dismissing Ali's civil rights action. The district court order denying reconsideration on November 16, 2021, is attached as Appendix C, and the opinion and order denying Mr. Ali's objections to the Magistrate Judge's recommendation, filed on September 28, 2021, is attached as Appendix D. Appendix E is the federal Magistrate Judge's recommendation regarding Mr. Ali's claims of retaliation for (1) issuing a false misconduct tickets; and (2) cancelling his medical shoe detail. The November 5, 2020, district court order denying Mr. Ali's reconsideration motion (Appendix F), and the September 21, 2020, opinion and order granting in part and denying in part the Magistrate recommendation, is

attached at Appendix G. Appendix H is the Magistrate Judge recommendation granting Defendants' motion for summary judgment based on failure to exhaust, filed on May 5, 2020. The opinion and order for partial dismissal of Mr. Ali's civil rights action, filed on May 31, 2019 is attached as Appendix I.

JURISDICTION

On April 4, 2023, the Court of Appeals affirmed the district court's judgment denying Mr. Ali's civil rights action. The Court of Appeals denied his timely filed petition for panel and en banc rehearing on June 14, 2023. App. A. This Court has jurisdiction under 28 USC §1254(1).

STATUTORY PROVISIONS AT ISSUE

The questions presented implicate the following provisions of the Prison Litigation Reform Act, provides in part, that: "No action shall be brought with respect to prison conditions under 42 USC §1983 . . . 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."

STATEMENT OF THE CASE

Fathiree Ali is a devout Muslim, confined in a Michigan state prison. In August, 2015, after complaints about religious harassment, he was attacked, maced and beaten by several Bellamy Creek (IBC) corrections officers while he preformed his Dhur prayer on the 7-unit yard. The blows continued until Plaintiff was unresponsive and nearly unconscious. App I, 59; App 86-93. Ali received lacerations to his wrist and numerous bruises to his arms, back, wrist and legs. At no time did Ali resist, threaten officers, or break prison rules. App I, 59. The officers denied Ali medical treatment for his injuries, and confiscated his medical shoes. Officers Simmons and Stump issued misconduct tickets to secure Ali's placement in segregation. App I, 60.

1. Ali's Efforts to Exhaust Available MDOC Administrative Remedies

Due to the unusualness of this incident (this is the first time during Mr. Ali's 33 yr. incarceration that he was physically attacked by MDOC officers for his religious beliefs), its severity of criminal implications and discriminatory conduct by the officers, and recurring changes in the prison's policy, Ali called for the deputy warden's advice on how to proceed with a complaint for what happened. Deputy Warden Davids, instructed Ali to file a grievance with the Office of Legal Affairs. App G, 43.

As directed and by use of the MDOC standardize 5 pg. grievance form, Ali filed his grievance with OLA. Without an identifier, OLA withheld three copies and returned only one page with instructions to file at the facility's grievance office. App M. Ali complied with the OLA instructions and sent the one page grievance to IBC's Grievance Coordinator for processing with Internal Affairs. App N. All claims concerning discriminatory harassment are processed and investigated under jurisdiction of Internal Affairs, MDOC policy, PD 01.01.140(N). App L, 79. The Coordinator did not transfer the grievance, but seized the grievance and returned it to Ali under ID# IBC 15-09-2401-28e, and additional instructions to file 4 copies. App G, 42-44.

A. Prison Officials Thwart Mr. Ali's Efforts for Exhaustion of Grievance IBC 15-09-2401-28e.

Since OLA had withheld three of the four required pages for filing the grievance, and by instructions from the prison counselor (per Coordinator) Ali re-writes the grievance identical to #2401. Later, the Coordinator denied Ali's request for #2401's Step II Appeal Form. Ali is unable to complete exhaustion of #2401. While #2401 supports Mr. Ali's claims, on November 5, 2020, the district court denied Mr. Ali's reconsideration motion on the "argument that he did properly exhausted claims I through VI." App F, 37-38. Defendants did not oppose exhaustion of grievance #2401; but the district court effective denied its weight

against #2436. App F, 37-38.

B. Prison Officials Thwart Mr. Ali's Efforts for Exhaustion of Grievance IBC 15-09-2436-28e

Ali then re-wrote and sent the grievance with proper copies to the Coordinator. Mr. Ali's allegations included harassment due to his religious belief. While discriminatory in context, like #2401, the Coordinator ignored policy dictates and kept #2436 from Internal Affairs investigation. The seized grievance was assigned ID #IBC-15-09-2436-28e, and rejected as untimely. See PD 01.01.140, Internal Affairs. App L, 79. Ali asked for a Step II appeal form for #2436 rejection, and pursued its appeal through all steps.

C. Ali's Efforts to Exhaust Retaliatory False Misconduct Tickets

At a disciplinary hearing on the charges, held on August 17, 2015, Ali contested the charged (misconduct tickets) with oral and written statements, request for witnesses, and evidence in the prison's possession. Ali claimed that the charges were induced in retaliation for his complaints to the officer's supervisor. The hearing's officer denied Ali access to all witnesses, evidence, and upheld the charges.

As a result of the constitutional violations, Ali appealed the HO's decision. OLA denied rehearing on October 14, 2015. Based on MDOC rules and law library postings, Ali filed a petition for judicial review in Michigan's Muskegon County Circuit Court on November 23, 2015, to address the questions of law, constitutional violations and preclusive effect of the facts. Ten months later judicial review was denied on September 15, 2016 -- Case No. 15-000464-AA.

This case was stalled due to MCF prison staff taking Ali's personal and legal property (documents and grievance for this action). Nearly two years passed before some pleadings were returned as a result of a complaint filed in Fathiree Ali v Johanna Betts, Western District Court of Michigan, Case #18-cv-1201. However, a buck of Ali's property was destroyed due to staff retaliatory

misconduct.

2. Proceedings in the District Court

Mr. Ali commenced this civil rights action in January 2018. The Defendants moved on a motion for summary judgment solely on plaintiff's failure to exhaust grievance #2436. While the court granted summary judgment on Counts I-VI, it rejected Count VII First Amendment retaliation claims. App G, 46-47. Because the Coordinator improperly seized #2401 and #2436 from Internal Affairs processing and investigation, Ali's exhaustion claims rest strongly upon the misdirection of grievance #2401, denial of its appeal form; particularly because it went unopposed by the Defendants. The multiple prison officials thwart misconduct also was not opposed by Defendants. Likewise, neither Defendant Hall or Hickok did not submit any affidavit to their involvement, yet the district court credited them as if they did. Since the Defendants did not contest or oppose the officials misconduct of #2401, the district court stray away from #2401 genuine dispute and opine that Ali's failure to exhaust resulted from his awareness of the procedure. App G, 43. Naturally, the district court denied Mr. Ali's repeated request to relent to Michigan's comity interest for interpretation of their own exhaustion requirement which demands judicial review. Instead, the court adopted the Magistrate recommendation interpreting the PLRA to exclude "judicial review" and deny tolling. This point was not presented/briefed by Defendants, however, the Magistrate without notice broadsided Ali with its sua sponte opinion. App E, 24-28.

Focusing on this Court's opinions in Bell v Wolfish and Jones v Bock, Mr. Ali relied upon the Michigan Attorney General's brief that recognizes -- App J, 71 -- judicial review as a MDOC exhaustion requirement. The district court found the argument unpersuasive. App D, 14. Based on the recommendation, all Defendants but Simmons was dismissed on the retaliation claims; and summary judgment was

granted due to Mr. Ali's failure to exhaust, the case was dismissed. App E, 24.

3. Proceedings in the Court of Appeals for the Sixth Circuit

Mr. Ali timely appealed the district court denials in the Sixth Circuit Court of Appeals, without the benefit of the liberal construction due to pro se applicants.

A. Exhaustion of Administrative Rules

The Court of Appeals affirmed the district court, and likewise read Ross to assess other non-authorized factors, like Mr. Ali's awareness of the grievance procedure. The court found it more probable that Ali caused his own failure to exhaust, rather than compliance to prison officials' misinformation or thwart misconduct. App B, 4-6.

B. Tolling / Equitable Tolling

Mr. Ali sought relief based on doctrine of equitable tolling because the MDOC postings and AG's brief mislead him to file a judicial review and default his claim. This affirmative representation caused Ali to miss his tolling. See Holland v Florida, 560 US 631 (2010). The Sixth Circuit denied this issue.

C. Retaliation Claims

The explicit holdings in Jones v Bock, and Bell v Wolfish were not followed, and Michigan's comity interest fell short to the Sixth Circuit's unpublished opinion on the grounds that "pursuit of remedies outside the prison's grievance process does not toll the limitation period." App B, 7-8. Again, Michigan's policy language that do not permit use of the grievance procedure for misconduct tickets is ignored, a crux to this case. Lastly, the Court of Appeals do not credit the declaration of Deandre Owens, who overheard the Defendants Stump and Wagner discuss and expose their retaliatory intent to take the plaintiff's shoes, which were medically assigned. App D, 84. The Sixth Circuit misses the genuine dispute and inferences that favors Mr. Ali's claims.

REASONS FOR GRANTING THE PETITION

The Sixth Circuit's decision warrants grant of writ of certiorari for several reasons. First, the Sixth Circuit's decision reflects a fundamental misunderstanding about this Court decision in Ross, on whether exhaustion is invariably excused when findings show that officials gave misleading information about the process; and does such findings foreclose a federal court's discretion to impose or look for other circumstance to mitigate the official's thwart actions? Second, on a fundamental principle of statutory construction and comity interest, the Sixth Circuit decision interprets the PLRA's text, 'administrative remedies' to exclude Congress' intent for: judicial review, errs on side of exhaustion and tolling, even though that review is required under the prison's exhaustion practices, does such exclusion by a federal court repeals Congress' intent and a state's comity interest? Lastly, the Sixth Circuit's decision on summary judgment standards conflict with procedural rules and this Court precedent, does this procedural err deny Ali's right of review?

ARGUMENT ONE

WHEN ASSESSING WHETHER PRISON ADMINISTRATORS MADE THE GRIEVANCE PROCEDURE UNAVAILABLE BASED ON THE THREE CIRCUMSTANCES IN ROSS V BLAKE, (1) WILL ALL FINDINGS OF THWART MISCONDUCT WARRANT RELIEF TO EXCUSE EXHAUSTION, AND (2) MAY A FEDERAL COURT IMPOSE OTHER FACTORS -- PLAINTIFF'S AWARENESS OF THE GRIEVANCE PROCEDURE -- INTO THE ASSESSMENT EVEN THOUGH THE RECORD DEMONSTRATES THAT THE INMATE WAS GIVEN AND FOLLOWED THE WRONG ADVISE ON WHERE TO FILE HIS GRIEVANCE

A. **The Sixth Circuit's attempt to distinguish this case from controlling case law errs as a matter of law, more important, it imposes a new -- awareness of the grievance process -- standard when determining whether administrators made the procedure unavailable**

In Ross v Blake, 578 US 632 (2016), this Court held that the PLRA contains built-in exceptions to the exhaustion requirement. Id. @ 635. The Court introduced three kinds of circumstances an administrative procedure is unavailable. Id. @ 643-644. Included in this category are machinations, misrepresentation or intimidation by prison administrators. As this Court illustrates, when one or more of the specified circumstances is present, "an inmate's duty to exhaust 'available' remedies does not come into play." Id. @ 643. But with Ali, the district court and Court of Appeals failed to heed these exceptions, especially when considering that the court records supports that a "housing deputy advised Ali that he could file a grievance with OLA." App B, 5-6; App F, 37-38; App G, 42-44.

Fathiree Ali "argues that the MDOC officials blocked his efforts to exhaust his grievance by giving him misinformation about where to file his grievance, returning his grievance without necessary pages, and refusing to provide a Step II appeal form." App G, 42; App P-86. The district court denied Ali the PLRA's exception to exhaustion, even though multiple actions by prison officials thwart his grievance filing and its appeal. Ali was denied review of his §1983 claims due solely to the district court's own amplified circumstances under Ross. The Court of Appeals upheld the erroneous interpretation. Both the district court and Court of Appeals heighten circumstances thus mocks any hope deserving of the

PLRA's exception or an inmate's relief from administrative schemes and thwart misconduct.

The Sixth Circuit decision that denied Ali the exhaustion exception reflects an unworkable belief that federal courts should take all necessary action to alleviate the confusion of skillful litigants. But, machinations, misrepresentation or intimidation is just the type of deceptive schemes Ross cures. A finding of thwart misconduct/misdirection by prison officials, especially when the crux of prison reform demands a prisoner's compliance with oral and written directive, should preclude a federal court from lessening the officials actions. In particular, as here, after finding thwart misconduct, the district court errs when they proceeded to widen the assessment net to include the inmate's awareness of the grievance process. Under Ross, such discretionary "look to all the particulars of a case to decide whether to excuse a failure to exhaust available remedies ... is now a thing of the past." Ross, 578 @ 641. Indeed, the same reasoning should be enforced upon existence of the three circumstances enumerated in Ross.

Likewise, it was error -- during summary judgment -- for the district court and Sixth Circuit to weigh and determine the truth of Mr. Ali's equally competing evidence about a prison official's misrepresentation, Ali's reliance on that information, against his "awareness of the grievance procedure." Such weight should favor the non-moving party. See, Anderson v Liberty Lobby, Inc, 477 US 242, 249 (1986).

Plainly, the Sixth Circuit's decision imposes a new standard outside of the PLRA's exhaustion requirement exceptions, an "awareness" factor. And enshrining that holding in a precedent will resurrect "special circumstances" to ignore that thwart tactics and administrative schemes altogether. Due to the confluence of errors of law, this Court should reject this broadening decision because that

approach is specifically the "special circumstance" and "wide-range discretion" which the PLRA history condemns. Ross at 641.

B. Both the district court and court of appeals rulings are inconsistent with this Court's decision in Jones v Bock, and thwarts the MDOC's exhaustion rule comity interest

This Court said that "the prison requirements, and not the PLRA, that define the boundaries of proper exhaustion, Jones v Bock, 549 US 199, 218-219 (2007). In this case, the MDOC imposes judicial review as part of their administrative exhaustion, which the plaintiff followed. Mr. Ali's compliance resulted in the district court's refusal to toll the limitation period under the PLRA's doctrine pending judicial review.

Despite this Court's clear guidance, the district court and Court of Appeals decided not to apply Jones. The court noted that in this case, "[t]he statute of limitations is tolled only while a plaintiff exhaust his available 'administrative remedies' ... a plaintiff's obligation to exhaust does not extend to judicial remedies." App. E, 9. The Court of Appeals then while denying equitable tolling because Ali was duped to follow MDOC rules and the district court did not address this issue, held that "pursuit of remedies outside of the prison's grievance process does not toll the limitations period. App. B, 6-7. But, the underlying judgments did not consider nor yield the MDOC's interpretation of their own rules, nor the Michigan Attorney General's admissions recognizing the prison's exhaustion requirement. See, App. J @ 71.

In particular, this Court should take judicial notice of the court's findings in Black v Michigan Department of Corrections, No. 2:10-cv-11211, 2012 WL 994768 (E.D. Mich. Feb. 29, 2012), report and recommendation adopted, 2012 WL 987781 (E.D. Mich. Mar. 23, 2012)(Michigan Attorney General argues that "Plaintiff failed to exhaust his administrative remedies because he did not file a petition for judicial review after his request for rehearing was denied." at,

*35-36). So, in this case, either Mr. Ali was duped by MDOC practices and the AG's submitted briefs recognizing the MDOC practice requiring judicial review as part of its complete administrative practice[1], or he reasonably followed their exhaustion practice, erred on the side of exhaustion, see Ross, 578 at 644, and deserves equitable tolling. Additionally, the MDOC post notices of their petition for judicial review exhaustion practices in the prison law library for their inmates to follow. Appendixes J-67; K-76.

Because the record reflects and reasonably demonstrates the MDOC exact judicial review as part of their exhaustion requirement, which Ali reasonably followed, and because the PLRA do not qualify a prison's exhaustion limits, both courts' judgments are wrong.

In light of precedent, in keeping with the prison's ability to regulate and determine its own rules -- Jones, @ 218-219, and Bell v Wolfish, 441 US 520, 546-47 (1979) -- and in response to the principles of the PLRA, and Congress' exhaustive directive, this Court should grant certiorari since the courts again has wrongly interpreted the PLRA's text and failed to follow binding authority from this Court.

C. As a matter of law, the district court and Sixth Circuit wrongly applied summary judgment standards

Fed.Rule.Civ.Proc. 56(a) authorized summary judgment only where 'there is no genuine dispute as to any material fact." As such, a "judges function in evaluating a motion for summary judgment is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v Liberty Lobby, Inc, 477 US 242, 249 (1986). In doing so, the court must "view the facts and draw reasonable inferences 'in the light most favorable to the party opposing the ... motion.'" Scott v Harris, 550 US

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1. Likewise, in Ross 578 @ 646-47, this Court found persuasive for its analysis to Blake's claims, briefs Blake submitted by the Maryland Attorney General recognizing the claimed practices about the Warden's grievance procedure.

372, 380 (2007).

This very circumstance is presented here. The district court and Sixth Circuit determined that Ali's awareness was the tilting factor for his failure to exhaust, despite thwart misconduct. See, App B, 6; and App F, 37. Both courts though acknowledged, should have given more credit to Mr. Ali's evidence about the prison official's thwart misconduct. See Anderson, 477 US at 249. As a number of cases from this Court illustrate, the courts' decision reflect a clear misapprehension of summary judgment standards, and the lower court's decision were wrongly decided. The errors of law combined to deprive Mr. Ali of the fundamental principles for review of his claims which he was entitled.

ARGUMENT TWO
THE PLRA'S SILENCE OF JUDICIAL REVIEW CONCERNS A FUNDAMENTAL QUESTION OF WHETHER THE TEXT INTERPRETATION LIMITS ONLY ADMINISTRATIVE REMEDIES

Without an explicit holding from this Court that clarifies the use of judicial review under the PLRA, particularly when federal courts' "administrative remedies only" approach abrogate prison rules and practices on exhaustion, and deprive litigants of its tolling.

A. Contrary to cardinal principles of statutory construction, the Sixth Circuit's and district court decisions effectively repeals by implication the availability of judicial review under the PLRA

In Kucana v Holder, 558 US 233, 251 (2010), this Court said that "a familiar principle of statutory construction: the presumption favoring judicial review of administrative action." The presumption can only be overcome by "clear and convincing evidence" of congressional intent to preclude judicial review. Reno v Catholic Social Services, Inc., 509 US 43, 64 (1993). In this case, Mr. Ali is denied tolling for exercise of the judicial review. Although the PLRA makes no reference to judicial review and express no limitations on its use of §1983 proceedings, the district court nevertheless created a bright line prohibition on the use of all judicial review in such cases.

The presumption in favor of judicial review is especially strong in cases in which constitutional challenges are raised. "Constitutional questions obviously are unsuited to resolution in administrative hearing procedures and therefore, access to the courts is essential to the decision of such questions." California v Sanders, 430 US 99 (1977). Indeed if Congress intended to preclude judicial review of the constitutionality of a statutory procedural scheme, that would likely raise a substantial question concerning the constitutionality of the statute itself. Weinberger v Salfi, 422 US 749, 762 (1975).

Unable to identify an explicit congressional conuntermand of the familiar principle of statutory construction favoring judicial review of administrative action, the district court instead constructed its own premise and conclusion -- "plaintiff's obligation to exhaust does not extend to judicial remedies, App E, 26 -- then attempted to support it by assembling other rules and law. Implicitly acknowledging the shaky foundation for its conclusion, the Court of Appeals affirmed its viewpoint by ignoring supporting precedent from this Court. The district court and Court of Appeals wrongly interprets "available administrative remedies", is inconsistent with the analytical framework used by this Court. And by failing to heed the statutory principles, raise grave questions about judicial review of constitutional claims or questions of law.

In Valentine v Collier, 140 SCt 1598, 1600 (2020), Justice Sotomayor wrote in a concurring opinion that "the PLRA requires exhaustion only of 'available' judicial remedies." (citing Ross v Blake, 578 US ___, ___ (2016). The district court's excision of judicial review crashes headlong into difficult issues of constitutional law, contrary to the Court's precedents. While a literal reading of the PLRA would collide with the Constitution (Due Process Clause), the Court and Justice Sotomayor, had read the language differently, or seized upon congressional silence or PLRA's incorporated §1983 jurisprudence, to avoid the

collision. This result follows from the Court's doctrine of constitutional avoidance -- "When a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise, our duty is to adopt the latter. Harris v United States, 536 US 545, 555 (2002).

B. This Court should resolve the inherent tension between administrative and judicial remedies under the PLRA and accord each provision independent significance

The lack of guidance in the PLRA itself, or from this Court, has spawned confusion in the lower courts regarding when and how to apply judicial remedies, as well as how the provisions intersect analytically. Many courts simply gloss over the tension by reading the two provisions as interchangeable, thus rendering either "administrative" or "judicial" superfluous. The Sixth Circuit bars use of judicial remedies, as in this case. Congress did not write one whit about limiting judicial review, even though the review has been in effect and in use since the PLRA was adopted. Only now, the Seventh and Sixth Circuits are distinguishing "administrtive" and "judicial" remedies under the PLRA and limiting its use. Congress only rule is written in judicial review, while the district court and Court of Appeals decisions constitutes ad hoc judicial rule-making, built of implication from silence.

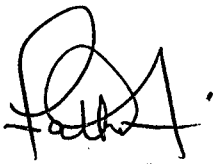
Mr. Ali on the other hand, even though required under MDOC rules -- petitioned judicial review on questions of law and the constitutionality of the prison's administrative hearing. To the extent it is recognized, judicial review is a remedy that judicial economy is best served by a unified package. And even if judicial review is discretionary, it is still an 'available' remedy which relief can be obtained. Because of its principle in statutory construction, judicial review pursuits should not be limited nor denied its purpose. Contrary to the district court's suggestion, Mr. Ali should not have to forego one entitlement of relief over another. Moreover, the court's rulings conflicts

with Justice Sotomayor's holding in Valentine, that have carved out exhaustion of judicial remedies, without upseting Congress' statutory intent. This Court grant certiorari to resolve the conflict in the PLRA's silence, and end the confusion of the lower courts.

As pointed out by the district court, Ali's exhaustion argument hinges on the timeliness of his original grievance," #2401. App G, 43. A grievance on the misguided belief of a deputy warden who regulates the affairs of his prisoners. A grievance seized by a Coordinator from its proper department. A judicial review's pursuit on the advice of Michigan's Highest Legal Office, Attorney General. A grievance and misconduct unchallenged by Defendants. Ali's fault was not a failure to exhaust, but the failure to trust those who are entrusted with his affairs and the affairs of the people. With years of hindsight and the knowledge that some state officials do thwart administrative remedies, the Sixth Circuit decision points to more confusion instead of proscribing and honoring our Highest Court's relief as enumerated in Ross.

Litigators, especially unskilled and pro se litigators, must make some litigation decision themselves; but for officials to step over or ignore the procedure, the facts, and the process is the deception that tramples upon the rights of the opposing and blameless party.

Respectfully, I ask this Court to grant this petition for writ of certiorari.



Respectfully submitted,

DATED: September 11, 2023