No. 23-

In the Supreme Court of the United States

JAY HYMAS, D/B/A DOSMEN FARMS,

Petitioner,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

DOUGLAS A. SMITH
MAX W. HIRSCH
Mayer Brown LLP
355 S. Grand Avenue
Los Angeles, CA 20006
(213) 229-9500

MICHAEL A. SCODRO
Counsel of Record
BRETT E. LEGNER
Mayer Brown LLP
71 S. Wacker Dr.
Chicago, IL 60602
(312) 782-0600
mscodro@mayerbrown.com

Counsel for Petitioner

QUESTION PRESENTED

Congress has determined that individuals should not be denied access to federal court based on their economic circumstances. To effectuate that important policy, Congress enacted 28 U.S.C. § 1915(a)(1), which governs *in forma pauperis* applications for all litigants. The statute provides in relevant part:

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

Does 28 U.S.C. § 1915(a)(1) grant district courts authority to set a *partial* filing fee for *in forma pauperis* litigants, as the Ninth Circuit below and the Sixth and Seventh Circuits have held, or only to waive prepayment of litigation fees in full as the Fifth Circuit has held?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The petitioner in this case is Jay Hymas, doing business as Dosmen Farms, and the respondent is the United States Department of the Interior.

Petitioner is an individual and therefore no Rule 29.6 disclosure is required.

RELATED PROCEEDINGS

None.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jay Hymas respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 73 F.4th 763, and is reproduced at Pet. App., *infra*, 1a-10a. The district court's order is unreported and is reproduced at Pet. App., *infra*, 13a-14a. The magistrate judge's report and recommendation is unreported and is reproduced at Pet. App., *infra*, 15a-18a.

JURISDICTION

The Ninth Circuit entered judgment on July 12, 2023. This Court granted Hymas an extension of time to file this petition to February 18, 2024. Pursuant to Supreme Court Rule 30(1), the due date for the petition is February 20, 2024, which is the first non-weekend, non-holiday day after the due date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §§ 1914 and 1915 are reproduced at Pet. App., *infra*,19a-23a.

STATEMENT

1. Congress has long authorized courts to exercise their discretion to waive prepayment of court fees and costs in their entirety for litigants based on their economic circumstances. Before April 25, 1996, Congress gave all federal courts the power to "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 persons who by affidavit state that they are "unable to pay such costs." 28 U.S.C. § 1915(a).

Effective April 1996, Congress amended this authority as part of the Prison Litigation Reform Act (PLRA), which created two different systems, one for prisoners acting as plaintiffs or appellants, and one for all other *in forma pauperis* (IFP) litigants. Following the amendment, 28 U.S.C. § 1915(b)(1) states that a prisoner plaintiff "shall be required to pay the full amount of the filing fee," but the court may assess and collect "a partial payment of fees" initially and the remainder through installments. Other than carving out that special rule for certain incarcerated litigants, the text of 28 U.S.C. § 1915(a)(1) remained substantively unchanged.

Subsection 1915(a)(1)'s phrase "without prepayment of fees" refers to any fees an IFP litigant might incur during the course of the litigation, including the filing fee to start the litigation (28 U.S.C. § 1914), the per diem and mileage fees for witnesses the IFP litigant calls (*id.* § 1821), transcript and printed record fees (*id.* § 1915(f)), the fee for filing an appeal (*id.* § 1913), and the District Court fee to file a petition for certiorari to this Court (*id.* § 1917). See *Thomas* v. *Zatecky*, 712 F.3d 1004, 1005 (7th Cir. 2013) (stating that § 1915(a)(1) "supplies judges' authority to allow litigation to proceed without prepayment of the fees required by § 1913 and other statutes, such as 28 U.S.C. §§ 1912, 1914, 1917, 1920, and 1921"). Subsection 1915(a)(1) thus permits a party with IFP status to proceed IFP throughout the litigation "without prepayment of fees" the party might incur.

2. On February 25, 2020, Petitioner filed a pro se complaint in the U.S. District Court for the Eastern

District of Washington against the United States Department of the Interior (the Department). C.A. E.R. 41-43. The complaint asserts violations of federal law pertaining to the leasing of Department-controlled farmland. *Id*. at 41. Petitioner alleges that the Department's land-leasing practices fail to comply with the competition and notice requirements in the Federal Grant and Cooperative Agreement Act, the Competition in Contracting Act, and the Administrative Procedure Act. *Ibid*. Petitioner also alleges that the Department violated federal law by removing an irrigation system and planting seeds on leased property. *Id*. at 42.

3. After rejecting Petitioner's initial and renewed applications to proceed IFP, the magistrate judge granted Petitioner's second renewed application "in part." Citing *Olivares* v. *Marshall*, 59 F.3d 109 (9th Cir. 1995), the magistrate required Petitioner to pay a partial filing fee of $100 instead of the $350 fee set by Congress in 28 U.S.C. § 1914(a). Further, the magistrate directed that the partial fee "shall also satisfy any Administrative Fee," which would have been the then-$52 administrative fee for filing a civil action set by the Judicial Conference of the United States pursuant to its authority under § 1914(b). In sum, the magistrate set Petitioner's filing fee at $100 instead of the required, combined fee of $402. C.A. E.R. 15.

4. Petitioner moved for reconsideration of the order setting a partial filing fee, explaining that he had "no income in the past 6 months" and would have to "deplete [his assets] to the point of zero" were he to pay the partial filing fee. C.A. E.R. 14. He also argued that imposing a partial filing fee on a non-prisoner

civil litigant, such as himself, was not permitted, reasoning that the "Olivares case and those cited by it are dealing with . . . prisoners." *Ibid.* This was a distinguishing factor, Petitioner argued, because unlike him, an inmate has "all his necessities of life provided for him" by virtue of being incarcerated and therefore is not "put in the untenable position of choosing the partial filing fee or life's essentials." C.A. E.R. 13, 14.

5. The magistrate denied the motion for reconsideration and reaffirmed his assessment of "a partial filing fee of $100.00 to fulfill the required filing and administrative fees." Pet. App., *infra*, 15a-18a. Regarding the court's authority to demand a partial fee, the magistrate reasoned that "[d]istrict courts have significant discretion [in] *setting the amount* of payment so long as the exercise of discretion serves the 'in forma pauperis statute's goal[s] of granting equal access to the courts regardless of economic status . . . , defraying some of the judicial costs of litigation[,] and screening out frivolous claims.'" *Ibid.* (quoting *Olivares*, 59 F.3d at 111 (emphasis added)). Noting that "[c]ourts in the Ninth Circuit have repeated[ly] relied on *Olivares* in civil proceedings," the magistrate exercised "discretion" to "recommend[] the previously assessed partial filing fee of $100 be affirmed." Pet. App., *infra*, 17a.

6. Without elaboration, the district court adopted the magistrate's report and recommendation and ordered Petitioner to "pay a filing fee of $100," which "shall also satisfy any Administrative Fee," within 14 days. Pet. App., *infra*, 14a. Hymas could not pay the $100 partial filing fee and appealed instead of proceeding with his case. See Notice of Appeal, ECF No. 27.

7. On appeal, the Ninth Circuit appointed pro bono counsel and asked the parties to address, *inter alia*, "whether under *Olivares* . . . , a district court can order a non-prisoner to pay a partial filing fee." C.A. Order 2, ECF No. 6. Relying on the plain language of § 1915(a) and the Fifth Circuit's decision in *Garza* v. *Thaler*, 585 F.3d 888, 890 (5th Cir. 2009), Petitioner argued that district courts may either make a plaintiff prepay the full filing fee or waive it entirely, but the court may not impose a *partial* fee on a non-prisoner plaintiff. C.A. Appellant's Br. 3.

The Ninth Circuit rejected this argument and affirmed. Without citing *Garza*, the court held that district courts have the authority to set partial fees, reasoning that district courts' "'greater power to *waive* all *fees* includes the lesser power to *set* partial fees,'" and that "partial filing fees serve the goals of the IFP statute." Pet. App., *infra,* 4a (quoting *Olivares*, 59 F.3d at 111 (emphasis added)). The court acknowledged that, post-*Olivares*, the PLRA amended § 1915 to distinguish between prisoner and non-prisoner litigants. *See* Pet. App., *infra,* 4a-6a. But the court rejected Petitioner's argument that the amendment rendered the holding in *Olivares*—which involved a prisoner plaintiff—irrelevant for non-prisoner plaintiffs like Petitioner. See Pet. App., *infra,* 6a-8a.

8. The Ninth Circuit denied Petitioner's petition for rehearing en banc, Pet. App., *infra,* 11a, and Petitioner timely filed this petition for certiorari.

9. The district court has since granted Petitioner's motion to stay proceedings in that court pending resolution of any proceedings in this Court. See D. Ct. Order, ECF No. 46.

REASONS FOR GRANTING THE PETITION

This petition squarely presents an important, frequently recurring question at the heart of parties' access to the courts, over which the circuit courts are split. In 28 U.S.C. § 1915(a)(1), Congress recognized that an individual's economic circumstances should not bar that individual from accessing the courts and accordingly gave district courts authority to waive the prepayment of litigation "fees"—including case-initiating fees (at issue here), U.S. marshal fees for effectuating service, witness fees, and appellate fees—if the litigant shows an inability to pay in a financial affidavit. But the circuits are split over whether Congress has granted district courts authority to set a partial filing fee, or whether Congress only authorized district courts to waive in full prepayment of litigation "fees," including filing fees, for those who qualify for IFP status. This Court's intervention is needed to resolve the circuit split over this issue and thereby guarantee that courts apply this important access-to-courts statute uniformly to all non-PLRA litigants.

I. THE CIRCUITS ARE SPLIT OVER WHETHER § 1915(A)(1) AUTHORIZES A DISTRICT COURT TO IMPOSE PARTIAL FILING FEES ON LITIGANTS PROCEEDING IFP.

The Ninth Circuit deepened an existing split over whether § 1915(a)(1) authorizes district courts to impose prepayment of partial filing fees on litigants seeking to proceed IFP.

1. In *Garza* v. *Thaler*, 585 F.3d 888 (5th Cir. 2009) (per curiam), the Fifth Circuit held that "there is 'no

authority'" in § 1915 or Federal Rule of Appellate Procedure 24[1] to "grant" an IFP motion while requiring partial payments of the appellate filing fee. 585 F.3d at 890. In that case, a magistrate judge granted an incarcerated habeas corpus petitioner leave to appeal IFP but ordered him to pay an initial partial appellate filing fee, with installment payments due on the remainder. *Id*. at 889-90. The magistrate "explicitly denie[d] that [he was] requiring payment of fees pursuant to the [installment payment plan in the] PLRA," as codified in § 1915(b) (because habeas petitioners are treated like *non-prisoner* litigants under § 1915). *Ibid.* Instead, he set the amounts of the initial partial filing fee and later installments on the theory that it was simply "within the court's discretion to order payment of fees when it does not impose undue hardship on a petitioner." *Id.* at 890.

The Fifth Circuit reversed. The court reasoned that under Federal Rule of Appellate Procedure 24, litigants granted IFP status "may proceed on appeal without prepaying or giving security for fees and costs, *unless a statute provides otherwise*." 585 F.3d at 890 (some emphasis omitted). And no statute authorized the court to set an initial partial fee. *Ibid.* The "only statute that *authorizes* payment of an initial partial filing fee, with the remainder in installments,

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[1] Subsection (a)(1) of Federal Rule of Appellate Procedure 24 provides in relevant part that, "[e]xcept as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." Subsection (a)(2) of Federal Rule of Appellate Procedure 24 provides in relevant part that, "[i]f the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees or costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing."

is the PLRA," as codified in § 1915(b) and applicable only to prisoners. *Ibid*. Accordingly, the "district court did not have either the discretion or the inherent power" under § 1915(a) to require prepayment of an initial partial filing fee or create an installment payment plan. See *ibid*; see also *Leslie* v. *Bryant*, 752 F. App'x 660, 664 (10th Cir. 2018) (for Leslie, a habeas petitioner not subject to § 1915(b), "*vacat[ing] those portions of the [district court's] orders assessing partial payment of fees*. Notwithstanding this directive, Leslie is reminded that § 1915(a)(1) excuses only prepayment of fees; he remains liable to pay the full amount of the appellate filing and docketing fees" (emphasis added)).[2]

2. The Sixth Circuit reached the opposite conclusion in *Samarripa* v. *Ormond*, 917 F.3d 515, 519 (6th Cir. 2019), recognizing that *Garza* "took a different approach." In *Samarripa*, federal prisoners appealing denials of their habeas corpus petitions sought to avoid prepaying the then-$505 appellate filing fee as litigants proceeding IFP. *Id.* at 516-517. Once again, district courts granted the motions in part under

[2] District courts within the Fifth Circuit have not been consistent in applying *Garza*. For instance, the court followed *Garza*'s rule in *United States* v. *Cotton*, 2011 WL 13213858, at *2 & n.14 (W.D. La. Aug. 25, 2011), holding that when § 1915(b)(1) does not apply, "there is no option for installment payments," and the litigant "must either pay the fee in full or satisfy the requirements for proceeding *in forma pauperis*," in which case prepayment of all court fees would be waived. But in *Thomas* v. *Saul*, 2020 WL 13573499, at *1 (N.D. Tex. Aug. 3, 2020), the court cited and followed the Sixth and Seventh Circuit decisions discussed below, without citing *Garza*, and held that § 1915(a)(1) authorized courts to require a partial filing fee rather than taking an all-or-nothing approach to prepayment.

§1915(a), this time requiring each petitioner to make a one-time, partial prepayment of the appellate filing fee. *Id.* at 517. And although the federal government in that case *sided with the petitioners* and "agreed that the district courts had no such authority" to order partial payment, *ibid.*, the Sixth Circuit affirmed. The court concluded that the Fifth Circuit's decision in *Garza* was "not convincing" and held that the PLRA language codified in § 1915(b)—specifically permitting an initial partial payment (with later installment payments) only for *prisoners*—did nothing to change courts' previously recognized discretion to order partial payment of fees under § 1915(a). *Id.* at 517-519.

3. *Samarripa* favorably cited the Seventh Circuit's decision in *Longbehn* v. *United States*, 169 F.3d 1082, 1083 (7th Cir. 1999), which also held that courts may assess an initial partial filing fee in cases not covered by the PLRA. *Samarripa*, 917 F.3d at 519. There, the district court required a habeas petitioner to pay a partial fee to proceed IFP on appeal, and to pay the remainder of the full statutory fee in later installments. *Longbehn*, 169 F.3d at 1083. In short, the court applied the rule codified in § 1915(b)(1) to a litigant not governed by § 1915(b). *Ibid.* The Seventh Circuit affirmed, announcing that "[p]artial-payment requirements remain appropriate even when the PLRA does not apply." *Ibid.* [3]

[3] District courts in other circuits have also followed the rule that § 1915(a) "allows the district court to exercise discretion in non-prisoner actions and require that the filing fee be made in installment payments" or "to require that a non-prisoner litigant seeking IFP status pay a one-time partial filing fee." *Wilson* v. *Twitter*, 2019 WL 540870, at *3 (W.D. Pa. Jan. 16, 2019); see also *LaFontaine* v. *Tobin*, 2013 WL 4048571, at *2 (N.D. Iowa Aug. 9,

The Seventh Circuit limited the district court's discretion, reasoning that the authority to assess an initial partial filing fee does not alleviate the litigant's responsibility to pay the entire fee eventually. *Longbehn,* 169 F.3d at 1083 ("[E]very litigant has a legal responsibility to pay the filing and docketing fees to the extent feasible. All that permission to proceed in forma pauperis has ever meant is that the fees need not be *pre*-paid"); see *Robbins* v. *Switzer*, 104 F.3d 895, 898 (7th Cir. 1997) ("Section 1915(b)(1) says that prisoners are liable for the full fees, but so is every other person who proceeds *in forma pauperis*; all § 1915(a) does for any litigant is excuse the *pre*payment of fees. Unsuccessful litigants are liable for fees and costs and must pay when they are able."). Thus, in the Seventh Circuit's view, § 1915 does not permit a court to set fee amounts different than those established by Congress or the Judicial Conference. See also *In re Williamson*, 786 F.2d 1336, 1338, 1340 (8th Cir. 1986) (reasoning, in pre-PLRA case, that "Section 1915 contains no provision indicating that a court may require a litigant to pay a portion of the fees and costs if he cannot pay the full amount," but holding that district court could nonetheless impose an initial partial fee combined with a payment plan to satisfy the full fee amount).

4. In this case, the Ninth Circuit deepened the split by siding with *Samarripa* and *Longbehn* (and the Ninth Circuit's pre-PLRA decision in *Olivares*)—without acknowledging *Garza*—and holding that §1915(a)(1) allows courts to set partial filing fees for non-prisoner litigants.

2013); *White ex rel. Diggs* v. *Barnhart*, 2002 WL 1760980, at *1 (M.D.N.C. July 30, 2002).

II. THE QUESTION PRESENTED IS IMPORTANT.

1. The question presented is not only recurring and unsettled, but it is also extraordinarily important to ensuring uniform access to the judicial system. Because of the current circuit split, a litigant seeking to file suit IFP in the Central District of California might be forced to prepay a $100 filing fee before proceeding with her case, while that same litigant, had she filed in the Western District of Louisiana, would not be required to prepay any filing fees. Unquestionably, access to federal court should not turn on geography, something Congress expressly recognized, for example, by setting the district court filing fee nationwide at $350 and having the Judicial Conference set other fees for all district courts, see 28 U.S.C. § 1914(a)-(b), and authorizing the Judicial Conference to "charge[] and *collect*[]" appellate fees in a manner that is "reasonable and *uniform* in all circuits." 28 U.S.C. § 1913 (emphasis added). The Ninth Circuit's decision converts courts' authority to waive the prepayment requirement for litigation fees, including filing fees, for litigants proceeding IFP into the power to set fees and thereby control access to the district and appellate courts. But the right to impose financial conditions on a litigant's ability to access the courts is a power Congress alone possesses. The Ninth Circuit's decision thus usurps Congress's fee-setting role and ignores that § 1915(a)(1) allows only for a waiver of the prepayment requirement for already prescribed litigation fees. The Ninth Circuit rule does so, moreover, without any of the protections available to non-habeas prisoners under the PLRA, codified in § 1915(b).

2. The case has nationwide importance and the potential to affect the massive number of non-prisoner litigants seeking IFP status, both in district court and on appeal. It is critical that federal courts remain available for civil rights and other claims advanced by these litigants, without court access depending on the happenstance of the location of the federal courthouse.

Likewise, the Ninth Circuit's rule in this case affects prisoners seeking a federal writ of habeas corpus, "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris* v. *Nelson*, 394 U.S. 286, 290-291 (1969).

3. In short, the question presented is important, and unless this Court provides guidance, litigants seeking to proceed IFP will continue to receive different treatment depending on the district in which they litigate. Only this Court can resolve this inconsistency.

III. THE NINTH CIRCUIT'S DECISION IS WRONG ON THE MERITS.

1. The plain language of § 1915(a)(1) permits courts to "authorize the commencement" of any suit or action "*without* prepayment of *fees*." (emphasis added.) Read naturally, this means that, based on its review of the IFP applicant's financial affidavit, the court either waives prepayment of all "fees" the IFP litigant might incur during the litigation, including the filing fee needed to initiate litigation, or none at all. Subsection 1915(a)(1) does not permit a district court to engage in a fee-by-fee analysis whereby it has authority to waive one fee but not another, or only waive part of a fee, thereby setting a new, partial fee.

As the Fifth Circuit recognized in *Garza*, "there is 'no authority'" in § 1915 to allow a district court to impose partial filing fees. 585 F.3d at 890.

2. The Judicial Conference appears to agree that § 1915(a)(1) requires the "all-or-nothing" approach in *Garza*. The "District Court Miscellaneous Fee Schedule" established by the Judicial Conference states: "Administrative fee for filing a civil action, suit, or proceeding in a district court, $55." Pet. App., *infra*, 19a. It then states, "This fee does not apply to applications for a writ of habeas corpus or to persons granted in forma pauperis status under 28 U.S.C. § 1915." *Ibid.* But under the Ninth Circuit's rule, the district court could ignore the statement that the $52 "fee does not apply" to IFP litigants and could invoke § 1915(a)(1) to charge the litigant a partial fee of $20. Or it could order, as in Hymas' case, "a partial filing fee of $100.00 to fulfill the required filing and administrative fees," Pet. App., *infra*, 16a, even though the administrative fee "does not apply" to persons granted IFP status, on the theory that the person is only being granted partial, not full, IFP status.

3. Subsection 1915(b) further supports Petitioner's (and *Garza*'s) reading of § 1915(a)(1). Subsection 1915(b)(1) provides that a "court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee." Subsection (b)(2) then requires that, "[a]fter payment of the initial partial filing fee, the prisoner shall be required to make [specified] monthly payments" until "the filing fees are paid." Further, subsection (b)(4) states that "[i]n no event shall a prisoner be prohibited from bringing a civil action" for lack of ability to pay the "initial partial filing fee."

Subsection 1915(b) thus uses the word "partial" four times. If Congress intended § 1915(a)(1) to give district courts the discretion to require partial fee payments, § 1915(b) shows that Congress knew precisely how to do so. Yet, when it enacted the PLRA, it did not include any such language in § 1915(a)(1). Courts "generally presume that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." *Intel Corp. Inv. Pol'y Comm.* v. *Sulyma*, 140 S. Ct. 768, 777 (2020) (cleaned up).

4. Subsection 1915(c) offers still more support for Petitioner's reading. That subsection provides that, "[u]pon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment *of any partial filing fee as may be required under subsection (b)*, the court may direct payment by the United States of [certain] expenses." Thus, Congress explicitly acknowledged that partial filing fees are permitted under subsection (b), while conspicuously omitting any reference to "partial filing fees" under subsection (a). If Congress meant to authorize courts to impose partial fees under subsection (a)(1), then it would have used the word "partial" in connection with those fees as well in subsection (c).

5. Finally, the decision below is difficult to reconcile with this Court's reasoning in *Crawford Fitting Co.* v. *J. T. Gibbons, Inc.*, 482 U.S. 437 (1987). *Crawford* held that the district court exceeded its discretion when it taxed the losing party above the then-$30-per-day witness fee provided in Federal Rule of Civil Procedure 54(d), reasoning that the "discretion granted by Rule 54(d) is not a power to evade this specific congressional command" that a witness "shall" be paid an

attendance fee of $30 per day for each day's attendance under 28 U.S.C. § 1821. 482 U.S. at 442. "Rather, it is solely a power to decline to tax, as costs, the items enumerated in § 1920." *Ibid.* Like Rule 54(d), the discretion § 1915(a) grants is not the "power to evade" the specific congressional command to charge the specific fees prescribed by 28 U.S.C. § 1914, namely the $350 filing fee set by Congress and the other fees set by the Judicial Conference.

For all of these reasons, the Ninth Circuit erred, and the judgment below should be reversed.

IV. THIS CASE IS AN EXCELLENT VEHICLE FOR ANSWERING THE QUESTION PRESENTED.

This case is an ideal vehicle to answer the question presented. The parties exhaustively briefed the meaning of § 1915 in the Ninth Circuit, and the court expressly decided that issue in a thorough, published opinion. Four Circuits have now weighed in on the issue. It is a purely legal question that does not turn on any disputed issues of fact. And because the case is stayed below, there are no jurisdictional or mootness issues that would prevent this Court from answering the question presented and resolving the circuit split.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

DOUGLAS A. SMITH
MAX W. HIRSCH
Mayer Brown LLP
355 S. Grand Avenue
Los Angeles, CA 20006
(213) 229-9500

MICHAEL A. SCODRO
Counsel of Record
BRETT E. LEGNER
Mayer Brown LLP
71 S. Wacker Dr.
Chicago, IL 60602
(312) 782-0600
mscodro@mayerbrown.com

Counsel for Petitioner

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