No. 24-743

IN THE

Supreme Court of the United States

NEIL DUPREE,

Petitioner,

v.

KEVIN YOUNGER,

Respondent.

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

BRIEF OF THE STATE OF MARYLAND AS AMICUS CURIAE SUPPORTING PETITIONER

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INTERESTS OF AMICUS CURIAE[1]

The Prison Litigation Reform Act of 1995 ("PLRA") requires that a prisoner "properly" exhaust available administrative remedies before bringing a civil action relating to prison conditions, *Woodford v. Ngo*, 548 U.S. 81, 93 (2006), including an action that claims the use of excessive force by correctional officers, *Porter v. Nussle*, 534 U.S. 516, 532 (2002). The PLRA's requirement that inmates properly exhaust "available" administrative remedies is mandatory. This Court therefore has rebuffed repeated efforts by lower courts to read exceptions into the requirement, stressing that "Congress has provided otherwise." *Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001); *see Ross v. Blake*, 578 U.S. 632, 639 (2016) ("[M]andatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes, foreclosing judicial discretion. . . . Time and again, this Court has rejected every attempt to deviate from the PLRA's textual mandate." (citing *Booth*, 532 U.S. at 741 n.6; *Nussle*, 534 U.S. at 520; and *Woodford*, 548 U.S. at 91)).

The State of Maryland makes available an opportunity for inmates to have their grievances resolved administratively. It has an interest both in requiring prisoners to properly exhaust those remedies in the context of claims of excessive force and in ensuring that courts enforce that requirement. As this Court has explained, the PLRA (1) provides "prisons with a fair opportunity to correct their own errors," (2) "persuade[s]" some prisoners "not to file an action," and (3) enables creation of an administrative record

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[1] In accordance with this Court's Rule 37.2, the State has provided counsel of record for both parties with timely notice of its intention to file this brief.

that assists courts in evaluating the merits of each case. *See Woodford*, 548 U.S. at 94-95.

Here, the court of appeals issued a decision that erroneously instructed individuals incarcerated in the facilities of Maryland's Department of Safety and Correctional Services that they lack any administrative remedy for excessive force by correctional officers, at least where there is a pending investigation by the Department's Intelligence and Investigative Division,[2] and must instead resort immediately to the courts. The decision, moreover, again deprives the Department of the benefits that Congress intended in enacting the mandatory exhaustion requirements of the PLRA. *See Blake v. Ross*, 787 F.3d 693 (4th Cir. 2015), *vacated and remanded*, 578 U.S. 632 (2016). The decision of the court of appeals in this case thus harms both inmates in the State's custody and the State itself.

SUMMARY OF ARGUMENT

1. Maryland's administrative remedy is "available" within the meaning of the PLRA: It can provide relief, including monetary compensation, to a prisoner who complains about a correctional officer's use of force, even where there is an ongoing internal investigation into the incident.

For most grievances, the administrative remedy process has three steps. The first two consist of filing a grievance with the correctional institution's facilities manager (typically the warden), followed by an appeal to the Commissioner of Correction. The third step is

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[2] The name Internal Investigative Unit ("IIU") was used below when referring to the Department's Intelligence and Investigative Division ("IID"); the name was changed in 2014 to the Intelligence and Investigative Division. 2014 Md. Laws ch. 217.

to submit the grievance to the Incarcerated Individual Grievance Office, an independent entity within the Department of Public Safety and Correctional Services, which provides the primary administrative remedy for any inmate grievance against a correctional officer.

When the Office receives an inmate grievance, it may dismiss a complaint that is wholly lacking in merit on its face—for instance, because it fails to state a claim or to demonstrate that the inmate has exhausted steps one and two. Otherwise, a grievance "shall" proceed to an adjudicatory hearing before an administrative law judge ("ALJ"). If the ALJ dismisses the grievance, the process ends. But if the ALJ determines that the grievance is wholly or partially meritorious, the ALJ submits a proposed decision granting relief to the Secretary of Public Safety and Correctional Services, who may affirm, reverse, or modify the decision or remand the matter to the ALJ. In all events, the inmate may seek judicial review of the final decision.

The pendency of an internal investigation does not excuse a prisoner's failure to exhaust administrative remedies. The Department's regulations reinforce that "[f]iling a complaint with the [IID] does not "[c]onstitute an administrative remedy" and does not "[e]xcuse an inmate from the requirement of pursuing an administrative remedy under this chapter." Md. Code Regs. 12.02.28.05H. And even though the pendency of an investigation will prevent adjudication of the inmate's grievance at step one or step two, it poses no obstacle to obtaining relief from the Incarcerated Individual Grievance Office—a fact underscored by the award of monetary compensation to Raymon Lee, an inmate who suffered injuries alongside Mr. Younger in the same incident.

2. The Incarcerated Individual Grievance Office's preliminary screening procedures, which are designed to weed out frivolous claims, do not render administrative remedies unavailable, including in circumstances where an internal investigation is pending. These procedures are consistent with Congress's intent to create a process that enables institutions and courts to screen complaints so that frivolous complaints are dismissed, and administrative and judicial decisionmakers can focus on adjudicating meritorious complaints.

In surmising that the pendency of an internal investigation would cause the Incarcerated Individual Grievance Office to dismiss a grievance, the court of appeals presumed, without foundation in Maryland's statutes or regulations, that the Office would misuse the very kind of screening procedures that Congress contemplated in enacting the PLRA. The decision thus undermines congressional intent to give state officials "a fair opportunity to correct their own errors," "persuade" some prisoners "not to file an action," and enable creation of an administrative record that assists courts in evaluating the merits of each case. *Woodford*, 548 U.S. at 94-95. Review by this Court is warranted.

ARGUMENT

I. MARYLAND'S ADMINISTRATIVE REMEDY PROCEDURE IS AVAILABLE FOR COMPLAINTS ABOUT "USE OF FORCE," EVEN WHILE AN INTERNAL INVESTIGATION IS ONGOING.

For purposes of the PLRA's exhaustion requirement, this Court has construed the statutory term "available" to mean that the prison's "administrative process [has] authority to take some action in response to a complaint," even if it cannot provide "the remedial

action an inmate demands." *Booth*, 532 U.S. at 736. Under this standard, inmates in Maryland have an "available" administrative remedy to obtain redress, including compensation, for the improper use of force by corrections personnel. Maryland statutes and regulations establish that remedy; indeed, Raymon Lee, an inmate who suffered injuries during the same incident as Mr. Younger, pursued the administrative remedy and obtained monetary compensation through the Incarcerated Individual Grievance Office.[3] Pet. 11; Pet. App. 37a-38a (documenting relief obtained by Raymon Lee based on injuries sustained in same incident as that underlying this case). That an internal investigation was pending does not alter the conclusion that Maryland's administrative remedy was "available" to Mr. Younger, as the award of compensation to Mr. Lee reflects.

A. Maryland's Administrative Remedy Process.

As the Fourth Circuit has explained, "[i]n Maryland, a prisoner must generally pass through three steps before filing in federal court." *Germain v. Shearin*, 653 F. App'x 231, 233 (4th Cir. 2016); *see Younger v. Crowder*, 79 F.4th 373, 379 (4th Cir. 2023). The first two steps occur within the Division of Correction's own internal grievance process, the Administrative Remedy Procedure or ARP. *See* COMAR 12.02.28.02B(1) (defining terms). The third step occurs before the Incarcerated Individual Grievance Office. *McCullough v. Wittner*, 314 Md. 602, 610-11 (1989); Md. Code Ann., Corr. Servs. § 10-202 (LexisNexis Supp. 2024) (establishing

[3] Legislation enacted in 2023 changed the name from the Inmate Grievance Office to the Incarcerated Individual Grievance Office. 2023 Md. Laws ch. 721.

Incarcerated Individual Grievance Office); *id.* § 10-206(a) (LexisNexis 2017) (authorizing Incarcerated Individual Grievance Office grievances by inmates); COMAR 12.07.01.01B(8) (defining "grievance" broadly as "the complaint of any individual in the custody of the Commissioner [of Correction]" arising from "the circumstances of custody or confinement").

The Incarcerated Individual Grievance Office, an independent entity outside the correctional institution and within the Department, provides the primary administrative remedy for any inmate grievance against a correctional officer.[4] *McCullough*, 314 Md. at 610; *see* Corr. Servs. §§ 10-201, 10-202; COMAR Title 12, subtitle 7. Among other remedies, the Office's regulations authorize an award of compensation to an inmate. COMAR 12.07.01.10D. The Secretary of Public Safety and Correctional Services, who is the final agency decisionmaker for inmate administrative grievances, has "broad discretionary remedial authority" over grievances brought before the Office, including the "authority to award monetary damages as long as funds are appropriated or otherwise properly available for this purpose." *McCullough*, 314 Md. at 610-11.

1. The Division of Correction's Administrative Remedy Procedure.

The Division's Administrative Remedy Procedure, encompassing the first two steps of the grievance process, provides inmates with the means to address and resolve grievances concerning conditions of confinement, first with the managing official of their

[4] The Office has statutory authority to adopt "regulations governing the conduct of its proceedings." Corr. Servs. § 10-204 (LexisNexis 2017). Those regulations refer to the Office under its former name, the Inmate Grievance Office. COMAR 12.07.01.01B(11).

institution (here, the warden), COMAR 12.02.28.05D(1), and then, if the inmate is still aggrieved, with the Commissioner of Correction, *id.* 12.02.28.01, 12.02.28.02B(1); 12.02.28.05D(2).

The ARP begins with the incarcerated individual's filing of a request for administrative remedy with the warden.[5] *Id.* 12.02.28.01B(2), 12.02.28.05D(1); 12.02.28.09B. If the inmate is dissatisfied with the warden's response, the inmate may appeal to the Commissioner. *Id.* 12.02.28.03A(5), 12.02.28.05D(2); s*ee also id.* 12.02.28.02B(3) (defining appeal); 12.02.28.14 – 12.02.28.17 (governing processing of ARP appeals). Once the Commissioner has responded to the inmate's appeal, the ARP concludes, and a dissatisfied inmate may then proceed to the third and final level of the administrative process by filing a grievance with the Incarcerated Individual Grievance Office. *Id.* 12.02.28.18.

2. The Incarcerated Individual Grievance Office.

When the Incarcerated Individual Grievance Office receives an inmate grievance, it conducts a "preliminary review." Corr. Servs. § 10-207(a) (LexisNexis 2017); COMAR 12.07.01.06A. "[I]f the complaint is determined to be wholly lacking in merit on its face, [the Office] may dismiss the complaint without a hearing or specific findings of fact." Corr. Servs. § 10-207(b)(1); *see* COMAR 12.07.01.06B (setting forth reasons for dismissal by the Office on preliminary review, which include failure

[5] The ARP provides for preliminary screening of complaints to determine whether they are "frivolous or malicious." COMAR 12.02.28.10A(1)(c)(i); *see Crowder*, 79 F.4th at 379 (explaining that an ARP complaint proceeds to the merits only where it is "neither frivolous nor procedurally deficient").

to state a claim and failure to exhaust remedies available under the administrative remedy procedure).[6] Complaints not dismissed after preliminary review as wholly lacking in merit "shall" proceed to an adjudicatory hearing before the Maryland Office of Administrative Hearings, where the merits of the grievance are presented before and heard by an impartial administrative law judge. Corr. Servs § 10-207(c); *id.* § 10-208 (LexisNexis Supp. 2024); COMAR 12.07.01.07A, D.

3. The Adjudicatory Hearing and Disposition of the Grievance by an Administrative Law Judge.

Following an adjudicatory hearing, *see* Corr. Servs. § 10-208, the ALJ issues a written decision describing the "disposition" of the claim and supporting "findings of fact" and "conclusions of law," *id.* § 10-209(a)(2) (LexisNexis 2017). If the ALJ dismisses the grievance, the administrative process ends. *Id.* § 10-209(b)(1). If, however, the ALJ "concludes that the complaint is wholly or partially meritorious," then the ALJ submits a proposed decision granting relief to the Secretary, *id.* § 10-209(b)(2), who may affirm, reverse, or modify the decision or remand the matter to the ALJ, *id.* § 10-209(c)(2).[7] "Unless the complaint is remanded, the Secretary's order constitutes the final [administrative] decision." *Id.* § 10-209(c)(3)(ii). Whatever the form of the final decision—a decision by the Secretary, a decision by

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[6] One such reason is when the inmate "did not properly exhaust administrative remedies under the [ARP]." COMAR 12.07.01.06B(4); *see* Corr. Servs. § 10-206(b) (authorizing the Incarcerated Individual Grievance Office to require ARP exhaustion by regulation).

[7] "The Secretary may take any action the Secretary considers appropriate in light of the [ALJ's] findings." Corr. Servs. § 10-209(c)(2).

the Incarcerated Individual Grievance Office to dismiss on preliminary review, or a decision to dismiss by the ALJ—the inmate may seek judicial review of that decision.[8] *Id*. § 10-210(b)(1) (LexisNexis Supp. 2024).

B. The Limited Function of the Intelligence and Investigative Division.

Maryland law makes clear that the Department's Intelligence and Investigative Division has no role in the administrative remedy process and that the pendency of an IID investigation does not excuse a prisoner's failure to exhaust administrative remedies. The IID is charged with investigating alleged criminal law violations and other serious misconduct by correctional officers and other employees, as well as alleged criminal law violations committed by inmates, visitors, and other individuals that affect the safety or security of the Department's facilities or programs. Corr. Servs. § 10-701(a) (LexisNexis Supp. 2024); COMAR 12.11.01.03A(1). Even as to the discipline of correctional officers or other employees, the IID's role is investigatory only. *See* Corr. Servs. § 10-701 (authorizing the IID to investigate alleged criminal acts and other misconduct of employees and others and report the results of the investigation); COMAR 12.11.01.03 (same). And the IID plays no role in the process of adjudicating inmate grievances. Thus, the Department's regulations underscore that "[f]iling a complaint with the [IID] does not "[c]onstitute an administrative remedy" and does not "[e]xcuse an inmate from the requirement of pursuing an administrative remedy under this chapter." COMAR 12.02.28.05H.

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[8] A dismissal by either the Incarcerated Individual Grievance Office or the ALJ is "the final decision of the Secretary for purposes of judicial review." Corr. Servs. §§ 10-207(b)(2)(ii), 10-209(b)(1)(ii).

If an inmate initiates the process by filing a request for an administrative remedy, and the incident in the request is the basis of an IID investigation, then the ARP complaint will be dismissed for procedural reasons. COMAR 12.02.28.11B(1)(h). In that event, the inmate is notified as follows:

> The request is procedurally dismissed at this level. It has been determined that the subject matter of your Request is under investigation by the Department's Intelligence and Investigative Division under case number [insert case number here] and no further action will be taken under the Administrative Remedy Procedures at this level. You may appeal this decision to the Commissioner of Correction.

Id. 12.02.28.11B(2)(d).

II. MARYLAND'S PRELIMINARY SCREENING PROCEDURES DO NOT RENDER ITS ADMINISTRATIVE REMEDIES UNAVAILABLE.

A. In Enacting the Prison Litigation Reform Act, Congress Responded to the Reality That Many Prisoner Claims Lack Merit.

Congress enacted the PLRA to reform prisoner litigation, "stem the tide" of prisoner lawsuits that were overwhelming the federal judiciary, 141 Cong. Rec. S7527 (daily ed. May 25, 1995) (remarks of Sen. Kyl), *reprinted in* 1 Legislative History of the Prison Litigation Reform Act of 1996, Pub. L. No. 104-134, at doc. 14 (Bernard D. Reems, Jr. & William H. Manz eds., 1997) ("Reems & Manz"), and "reduce the intrusion of the courts into the administration of the prisons," 141 Cong. Rec. H14098 (daily ed. Dec. 6, 1995) (remarks of Rep. LoBiondo), *reprinted in* Reems & Manz, at doc. 18.

A "high percentage" of prisoner suits were "meritless, and many [were] transparently frivolous." *Gabel v. Lynaugh*, 835 F.2d 124, 125 n.1 (5th Cir. 1988). These suits "tie[d] up the courts, waste[d] judicial resources, and affect[ed] the quality of justice." 141 Cong. Rec. S14413 (daily ed. Sept. 27, 1995) (remarks of Sen. Dole), *reprinted in* Reems & Manz, at doc. 12. As one federal judge put it, a prisoner who "actually suffers a meaningful deprivation . . . must hope that in that sea of frivolous prisoner complaints, his lone, legitimate cry for relief will be heard by a clerk, magistrate or judge grown weary of battling the waves of frivolity." *Cotner v. Campbell*, 618 F. Supp. 1091, 1096 (E.D. Okla. 1985), *aff'd in part, vacated in part sub nom. Cotner v. Hopkins*, 795 F.2d 900 (10th Cir. 1986).

The creation of an "invigorated" exhaustion requirement was the "centerpiece" of the congressional effort to ameliorate the wave of frivolous prisoner litigation. *Woodford*, 548 U.S. at 84; *Porter*, 534 U.S. at 529. That requirement dictates in unambiguous terms that "[n]o action shall be brought with respect to prison conditions . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). As this Court has held, the plain language of the PLRA makes the exhaustion requirement mandatory, *Porter*, 534 U.S. at 529, and requires the "proper exhaustion" of all remedies that are "available," *Woodford*, 548 U.S. at 93.

B. Maryland's Preliminary Screening Procedures Facilitate the Considered Disposition of Meritorious Grievances.

The court of appeals reached the remarkable conclusion that because Maryland's statutory and regulatory scheme permits the screening and dismissal of complaints that

lack merit on their face, the State lacks an available administrative remedy under the PLRA for prisoner complaints that are the subject of an IID investigation. The court reached this conclusion even though the cited statutes and regulations do not limit the Incarcerated Individual Grievance Office's ability to adjudicate grievances that are also the subject of pending IID investigations.

Indeed, the court of appeals acknowledged that Maryland law on its face provides an administrative remedy, with no exception for circumstances where an IID investigation is pending: For all claims, the procedure specifies that the incarcerated individual is to exhaust the ARP and then submit the complaint to the Incarcerated Individual Grievance Office. *Crowder*, 79 F.4th at 380. But the court nonetheless found that this remedy was not "available" to Mr. Younger within the meaning of the PLRA because of the pending IID investigation:

> [A]n intrepid inmate who appeals his loss before the Commissioner of Correction[] to the Inmate Grievance Office while an investigation is pending would suffer [summary dismissal]. *See* Md. Corr. Servs. § 10-207 (authorizing the Office to summarily dismiss a grievance that is "wholly lacking in merit on its face"); [COMAR] 12.07.01.08(C) (requiring an inmate to show the Office that the underlying dismissal is "arbitrary and capricious" or "contrary to law"). So an inmate filing a grievance over an event that is being investigated by the [IID] faces nothing but "dead end[s]" that are "practically speaking, incapable of use."

Crowder, 79 F.4th at 380 (quoting *Ross*, 578 U.S. at 643-44).

The court of appeals did not explain how a statute and regulation permitting dismissal of complaints that fail to state a claim or that present unexhausted claims would present a "dead end" to an incarcerated individual who properly exhausted a use of force complaint through Maryland's administrative process. Had Mr. Younger followed the same path as Mr. Lee, he would have exhausted his claim at steps one and two and arrived at step three with a claim that did *not* lack merit on its face. And there is no reason to think the Incarcerated Individual Grievance Office would have summarily dismissed the grievance: When presented with such a properly exhausted use-of-force claim, "the Office *shall* refer the complaint to the Office of Administrative Hearings," and the "Office of Administrative Hearings *shall* hold a hearing on the complaint as promptly as practicable." Corr. Servs. § 10-207(c) (emphasis added).

Unlike Mr. Lee, however, Mr. Younger failed to follow the steps required to properly exhaust the available remedies that Maryland law requires an inmate to exhaust even where a parallel IID investigation is underway. Mr. Younger thus failed to obtain a hearing before an ALJ only because he failed to follow the established administrative remedy procedures for use-of-force complaints, not because those procedures were "unavailable."

* * * * *

The court of appeals' decision presumes, without foundation in Maryland's statutes or regulations, that the Incarcerated Individual Grievance Office would misuse the very kind of screening procedures

contemplated by Congress in enacting the PLRA: procedures to weed out frivolous claims so that administrative and judicial decisionmakers can focus on adjudicating meritorious complaints. The decision undermines congressional intent to provide that screening mechanism, give state officials "a fair opportunity to correct their own errors," "persuade" some prisoners "not to file an action," and enable creation of an administrative record that assists courts in evaluating the merits of each case. *See Woodford*, 548 U.S. at 94-95. Review by this Court is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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