NO. 24-857

In the
Supreme Court of the United States

BRIAN ESTRADA,
Petitioner,
v.
JACOB SMART,
Respondent.

On Petition for Writ of Certiorari to the
U.S. Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

In *Perttu v. Richards*, 145 S. Ct. 1793 (2025), this Court declined to address whether the Seventh Amendment's right to a trial by jury extends to issues of fact related to the exhaustion of administrative remedies under the Prison Litigation Reform Act of 1997 ("PLRA"). Instead, this Court held that parties are entitled to a jury trial on PLRA exhaustion when that issue is intertwined with the merits of a claim protected by the Seventh Amendment.

The questions presented are:

1. Whether a judge may resolve factual disputes relevant to the exhaustion issue without the participation of a jury if the facts related to exhaustion are not intertwined with the merits of the underlying decision.

2. Whether, where a prisoner in prison custody is shot by a prison officer to prevent the prisoner's escape from a courthouse, the courthouse shooting is a "prison condition," for purposes of 42 U.S.C. § 1997e(a).

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INTRODUCTION

Petitioner, a prisoner in the custody of the Colorado Department of Corrections ("CDOC"), attempted to escape from the courtroom where he was being arraigned for assaulting a correctional officer. While court was in session, Petitioner leaped down from the jury box and ran down the center aisle of the courtroom, seemingly undeterred by the shackles on his ankles and wrists, which were also connected to his waist. He passed two correctional officers, who were unable to capture him, or indeed even slow him, as he ran by. As members of the public, including a woman with an infant, cowered in fear, Officer Smart found himself the sole impediment between Petitioner and the door leading from the courtroom to the unsecured public hallway. Officer Smart repeatedly ordered Petitioner to stop, finally brandishing his service weapon when Petitioner refused to obey his commands. Undeterred, Petitioner continued to run toward Officer Smart, who discharged his service weapon when Petitioner was no more than a single arm's length from him. Petitioner continued to run until he fell in the hallway outside of the courtroom, where he was finally detained.

The decision below related to Petitioner's claim that Officer Smart used excessive force in violation of the Eighth Amendment by shooting Petitioner to prevent his escape. Pet. App. 3a–4a.

Petitioner's first question presented expanded on the question this Court agreed to hear in *Perttu*: in cases subject to the PLRA, whether prisoners have a right to a jury trial concerning their exhaustion of administrative remedies where disputed facts regarding

exhaustion are intertwined with the underlying merits of their claim. Filed while *Perttu* was pending and presuming that this Court would address the question presented broadly and under the Seventh Amendment, the Petition primarily requested that this Court hold the Petition pending *Perttu* and then dispose of it accordingly.

There are two problems with Petitioner's first question presented. First, *Perttu* has now been decided, mooting the request to hold the Petition. And considering *Perttu's* holding, Petitioner's alternative request that this Court should nevertheless grant, vacate, and remand in light of *Perttu* is no longer necessary. Pet. 9 n.2. Second, neither the district court nor the Tenth Circuit resolved any disputed issues of fact regarding exhaustion.

In *Perttu*, this Court held that parties have a right to a jury trial on PLRA exhaustion when that issue is intertwined with the merits of a claim. *Perttu v. Richards*, 145 S. Ct. 1793, 1800 (2025). Here, the Tenth Circuit not only reached the same holding, but also determined that Petitioner did not argue that the merits of his claim are intertwined with administrative exhaustion. Indeed, the Tenth Circuit determined that Petitioner failed to present any disputed facts regarding exhaustion, instead relying entirely on attorney argument. Because of that fundamental difference, *Perttu* has no bearing on the Tenth Circuit's decision. Under these circumstances, a GVR is unwarranted.

Petitioner's alternative request for plenary review of his second question presented fares no better. The Tenth Circuit determined that the PLRA applied to Petitioner's claim because he was a prisoner in CDOC

custody at the time of the shooting. The Tenth Circuit's holding that the phrase "prison conditions" within the meaning of the PLRA's exhaustion requirement is not limited to the area inside a prison was correct. The holding implicates no conflict among circuit courts. And Petitioner presents no exceptionally important reason for this Court to expend its limited judicial resources reviewing it. The petition should be denied.

STATEMENT OF THE CASE

On May 30, 2018, Petitioner, who was a prisoner in the custody of the Colorado Department of Corrections, attempted to escape from the courtroom where he was being arraigned for assaulting a correctional officer. C.A. App. AA79.[1] Although Petitioner's ankles and hands were shackled, he was able to leap down from the jury box and run toward the courtroom door. C.A. App. AA82. At one point, Petitioner fell to the ground. C.A. App. AA83. Rather than abandoning his escape attempt, Petitioner got up and resumed his attempt to escape custody by fleeing the courtroom. *Id.* Officer Smart ordered Petitioner to stop multiple times. *Id.* Eventually, Petitioner closed within an arm's length of Officer Smart. *Id.* As he was retreating through the courtroom door into the vestibule separating the courtroom from the hallway, Officer Smart shot Petitioner in the midsection to prevent his escape from the courtroom. *Id.* Petitioner continued to run toward Officer Smart, ignoring directives from both Officer Smart and three other officers, until Officer

[1] "C.A. App. AA#" denotes references to the Tenth Circuit Court of Appeals Appendix, which appears at docket no. 25 on the Court of Appeals docket.

Smart had shot him three times. C.A. App. AA84. Petitioner then fell to the ground where he was detained. *Id.*

In February 2020, Petitioner sued Officer Smart in federal court under 42 U.S.C. § 1983, asserting an excessive force claim under the Eight Amendment and seeking actual damages, exemplary damages, reasonable attorney's fees, and costs. C.A. App. AA20–25.

Officer Smart moved for summary judgment based on Petitioner's failure to file any grievances related to the shooting and demonstrated that Petitioner had filed other grievances during the relevant timeframe. C.A. App. AA98.

The district court ruled for Officer Smart and dismissed Petitioner's suit for failure to exhaust. Pet. App. 43a. In so doing, the district court rejected Petitioner's argument that the CDOC's grievance procedure applied only to incidents occurring within a CDOC facility because: (1) CDOC's grievance procedure is broadly written to include incidents outside CDOC facilities; and (2) the Tenth Circuit had twice applied the PLRA's exhaustion requirement to incidents occurring outside CDOC facilities. Pet. App. 38a; 40a.

Petitioner appealed to the Tenth Circuit, which affirmed the district court's entry of summary judgment against Petitioner. Pet. App. 26a. The Tenth Circuit held "'that judges may resolve factual disputes relevant to the exhaustion issue without the participation of a jury.'" Pet. App. 8a (quoting *Small v. Camden Cnty.*, 728 F.3d 265, 271 (3d Cir. 2013)). However, the Tenth Circuit identified an exception to this rule, noting "[t]his holding contains a caveat: The holding

applies 'as long as the facts are not bound up with the merits of the underlying dispute.'" *Id.* at 9a, n.1. The Tenth Circuit then noted that Petitioner made no argument that the merits of his claim are intertwined with administrative exhaustion. *Id.*

With respect to Petitioner's argument that CDOC's grievance procedure did not apply outside CDOC's facilities, the Tenth Circuit held that no evidentiary hearing was required because Petitioner failed to offer any evidence to support the argument. *Id.* at 9a–11a.

The Tenth Circuit next considered the meaning of "prison conditions" in 42 U.S.C. § 1997e(a). Pet. App. 12a. Petitioner had argued that the PLRA exhaustion requirement applied only to a claim for relief related to the conditions of confinement in a prison. *Id.* In turn, he contended that the courthouse where the shooting occurred was not a prison, and thus, the PLRA did not apply. *Id.* In rejecting Petitioner's narrow interpretation, the court first relied on a related provision of the PLRA, 18 U.S.C. § 3626(g)(2), which "defines a 'civil action with respect to prison conditions' broadly as 'any civil proceeding . . . with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison[.]'" Pet. App. 12a–13a. The Tenth Circuit rested its decision on its own precedent, guidance from other Circuit Courts, and caselaw presuming that a definition provided by Congress in one statute applies to another related statute. *Id.* at 13a–14a.

Finally, because he had failed to raise it below, the Tenth Circuit declined to reach Petitioner's argument

that he was excused from exhausting remedies because they were unavailable. *Id.* at 25a–26a.

REASONS FOR DENYING THE PETITION

I. GVR is not appropriate in this case.

"[A] GVR order . . . promotes fairness and respects the dignity of the Court of Appeals by enabling it to consider potentially relevant decisions and arguments that were not previously before it." *Stutson v. United States*, 516 U.S. 193, 197 (1996). It is appropriate when "'intervening developments . . . reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome' of the matter." *Wellons v. Hall*, 558 U.S. 220, 225 (2010) (quoting *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167 (1996)). "Whether a GVR order is ultimately appropriate depends further on the equities of the case." *Lawrence*, 516 U.S. at 167–68.

This Court has cautioned that the "GVR power should be exercised sparingly." *Lawrence*, 516 U.S. at 173. It need not be expended on this case. There is no chance *Perttu* changes the outcome.

A GVR order is unwarranted here for two reasons. First, the Tenth Circuit's decision is not impacted by *Perttu*. Second, the equities weigh against it.

A. The Tenth Circuit's decision is unaffected by *Perttu*.

A GVR order in light of *Perttu* is unwarranted because *Perttu* has no bearing on the Tenth Circuit's decision. First, the Petition assumed this Court would decide *Perttu* on broad, constitutional grounds. It did not. Second, the Tenth Circuit agreed with this Court's holding in *Perttu*, acknowledging that a court cannot resolve factual disputes intertwined with the underlying claims without the participation of a jury. But here, the lower court determined, Petitioner never argued that the facts relating to exhaustion are intertwined with his claim of excessive force in violation of the Eighth Amendment.

1. *Perttu* was resolved on narrow, statutory grounds; it did not reach the constitutional question Petitioner raises now.

When Petitioner filed his petition for writ of certiorari, he anticipated that this Court would decide the then-pending *Perttu* case on broader Seventh Amendment grounds. *See* Pet. 9. Indeed, Petitioner acknowledges that his first question presented, "[w]hether the Seventh Amendment's right to a trial by jury extends to issues of fact related to the exhaustion of administrative remedies" was presented in the merits briefing in *Perttu*. Pet. (i). But this Court resolved *Perttu* narrowly, holding that parties are entitled to "a jury trial on PLRA exhaustion when that issue is intertwined with the merits of a claim protected by the Seventh Amendment." 145 S. Ct. at 1807. As a result, this Court "express[ed] no view . . . on whether Congress

could have required otherwise in the PLRA without violating a party's Seventh Amendment right to a jury trial." *Id.* at 1800. Because this Court did not reach any Seventh Amendment question in *Perttu*, let alone the broader one on which Petitioner requests review, Petitioner's request that this Court GVR in light of *Perttu* is no longer pertinent.

2. The decision below is fully consistent with *Perttu*.

Perttu's holding does not undermine the Tenth Circuit's decision that Petitioner failed to exhaust his administrative remedies. *Perttu* determined that parties have a right to a jury trial on PLRA exhaustion when that issue is intertwined with the merits of a claim. That holding is not implicated here because the Tenth Circuit correctly (1) recognized that same principle; and (2) determined that it did not apply in this case.

In *Perttu*, the petitioner asserted that the respondent violated his First Amendment rights by interfering with his ability to file grievances by destroying them, threatening him against filing them, and holding him in administrative segregation for filing grievances. 145 S. Ct. at 1799. Considering these allegations, this Court held that, "parties have a right to a jury trial on PLRA exhaustion when that issue is intertwined with the merits of a claim that falls under the Seventh Amendment." *Id.* at 1800. Because Petitioner's merits claim was intertwined with whether he had failed to exhaust, the Court held that he did have a right to a jury trial on exhaustion.

Here, Petitioner brought a single claim for excessive force in violation of the Eighth Amendment. Pet.

App. 3a–4a. Petitioner did not allege a claim for retaliation in violation of the First Amendment, and he has never claimed that Officer Smart (or any other CDOC employee) destroyed grievances, threatened him, placed him in administrative segregation, or otherwise retaliated against him for filing grievances. His claim for excessive force does not relate in any way to whether he exhausted his administrative remedies.

The decision below agreed with the holding in *Perttu*, recognizing that a jury must resolve factual disputes when the facts are intertwined with the merits of the dispute. Pet. App. 9a n.1. Even so, the Tenth Circuit determined that Petitioner did not argue that the merits of his claim were intertwined with administrative exhaustion. *Id.* ("[Petitioner] makes no argument that the merits are intertwined with administrative exhaustion."). And, although Petitioner does not appear to do so, any attempt to raise this new argument for the first time in this Court would be improper.[2] *See Thompson v. United States*, 145 S. Ct. 821, 828 (2025) (declining to address an issue raised for the first time, because neither the district court nor circuit court "answered that question,

[2] Not only did Petitioner's case not involve intertwinement, but it did not even involve a judge's resolution of a factual dispute over exhaustion. Recall, the issue of Petitioner's failure to exhaust arose on summary judgment. The district court concluded that no evidentiary hearing was required because Petitioner had not presented any evidence indicating a disputed issue of fact that required such a hearing. Pet. App. 11a. Not only does this posture remove this case even further from the facts of *Perttu*, but it underscores why this case would be a poor vehicle for plenary review of whether the Seventh Amendment required a jury trial related to issues of exhaustion.

and 'we are a court of review, not of first view'") (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (because defensive pleas "were not addressed by the Court of Appeals, and mindful that we are a court of review, not of first view, we do not consider them here")).

Because *Perttu* did not address the constitutional question that Petitioner anticipated, the only potential purpose of a GVR order would be to give Petitioner an unwarranted opportunity to introduce new arguments that were not raised below.

B. The equities weigh against a GVR order.

The equities of this case further support a denial of the petition. *See Lawrence*, 516 U.S. at 168. Where, as here, "the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration by the lower court," and as such, "a GVR order is inappropriate." *Id.*

That delay and further cost are especially unjustified here because the holding in *Perttu* has no bearing on the Tenth Circuit's decision below. As argued above, there is no "particular issue" that the court below "does not appear to have fully considered." *Lawrence*, 516 U.S. at 167. And there is no danger of lack of "fairness," or need to preserve the "dignity of the Court of Appeals" because *Perttu* is not a "potentially relevant decision[] . . . not previously before it." *Stutson*, 516 U.S. at 197. As argued above, the Tenth Circuit's decision is fully consistent with *Perttu*, and Petitioner does not contend his case involves intertwinement.

At the same time, a remand in this case would waste judicial resources and unnecessarily prolong finality. Again, the Tenth Circuit already reached the holding that this Court announced in *Perttu*. Remanding this case for another round of briefing and argument in the Tenth Circuit to determine if the same outcome would be reached in light of *Perttu* would be a pointless exercise. It would also undermine the public interest in the finality of judgments. *See Stutson*, 516 U.S. at 197 ("Judicial efficiency and finality are important values, and our GVR power should not be exercised for '[m]ere convenience.'") (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 274 (1942)). A GVR order in this case would also create unnecessary uncertainty, which goes against the public interest and the interests of the parties. *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26 (1994) ("'Judicial precedents are presumptively correct and valuable to the legal community as a whole.'") (quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 40 (1993) (Stevens, J., dissenting)); *see also Arizona v. California*, 460 U.S. 605, 645 (1983) (Brennan, J., concurring) (highlighting the importance of "certainty" as an "obvious benefit[] to society" in the context of legal precedents that have long-term effects for society). Finally, in addition to society's interest in the certainty of judicial precedent, Officer Smart's desire for finality and the ability to move on should not be overlooked.

In sum, weighing the "delay and further cost" of a GVR against "judicial efficiency" and "finality" under these circumstances, GVR is inappropriate in this case. *Lawrence*, 516 U.S. at 168; *Stutson*, 516 U.S. at 197.

II. Plenary review is unwarranted.

Petitioner's argument for plenary review of the second question presented fares no better. The Tenth Circuit's holding that the PLRA's exhaustion requirement applies to a courthouse shooting of a CDOC prisoner by a CDOC officer does not warrant further review. Petitioner overstates the need for this Court's intervention.

A. The Tenth Circuit's holding regarding the term "prison conditions" does not warrant review.

The Tenth Circuit properly held that the term "prison conditions" within the meaning of the PLRA's exhaustion provision was not limited to the area inside a prison. Pet. App. 13–15a. Accordingly, for Petitioner, the courthouse shooting was a prison condition subject to the PLRA's exhaustion requirement. *Id.* at 21a. This holding implicates no circuit split.

1. The decision below is correct.

The Tenth Circuit's interpretation of the term "prison conditions," both generally and as applied in this case, is correct. In rejecting Petitioner's geography-based argument—that the PLRA's exhaustion requirement applies only to a claim related to the conditions of confinement in the physical prison—the Tenth Circuit adopted an interpretation of the PLRA that is in line with both the text, history, and context of the statute, as well as this Court's guidance.

As a textual matter, the phrase "prison conditions" in § 1997e(a) is undefined. However, a related provision of the PLRA, 18 U.S.C. § 3626(g)(2), defines a "civil action with respect to prison conditions"

broadly as "any civil proceeding . . . with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison[.]" *See* Pet. App. 12a–13a. Consequently, the Tenth Circuit used the definition of prison conditions in § 3626(g)(2) to interpret the meaning of "prison conditions" in § 1997e(a). *Id.* at 13a. Far from being error as Petitioner argues, the Tenth Circuit's approach is fully consistent with cannons of statutory construction approved by this Court. *See United States v. Davis*, 588 U.S. 445, 458 (2019) ("[W]e normally presume that the same language in related statutes carries a consistent meaning."); *see also Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 279 (2018) (noting presumption and observing that the "presumption must bear particular strength when the same Congress passed both statutes to handle much the same task.").

Even so, the Tenth Circuit's reliance on § 3626(g)(2) was not the sole basis for the panel's conclusion that the PLRA applied in this case. And its additional discussion confirms the propriety of its ultimate holding.

"[W]hether the PLRA applies is not dependent strictly and solely upon geography but on whether a prisoner is confined in any jail, prison, or other correctional facility." Pet. App. 16a. To that end, other textual clues in § 1997e(a) supported its determination that the scope of the PLRA is broadly construed. For example, Congress used the term "any," to expand a disjunctive list ("jail, prison, or other correctional facility"). Pet. App. 16a. Likewise, § 1997e(a) also contains the phrase "with respect to," which is equally broad. Pet. App. 16a. And, of course, as this Court has

emphasized, the PLRA exhaustion provision is captioned "Suits by prisoners," an "unqualified heading" which further reinforces the intent that PLRA exhaustion requirements broadly apply. *Porter v. Nussle*, 534 U.S. 516, 527–28 (2002) (citing *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." (internal quotation marks omitted)).

Bolstering the Tenth Circuit's rejection of Petitioner's narrow construction is the history and statutory context of the PLRA. *See Ross v. Blake*, 578 U.S. 632, 640 (2016) (referencing the history of the PLRA to underscore the mandatory nature of its exhaustion regime). As everyone agrees, Congress passed the PLRA with the goal of "fewer and better prisoner suits." *Jones v. Bock*, 549 U.S. 199, 203 (2007); *see also* Pet. 14. And when it did so, it clearly intended to broaden and strengthen administrative exhaustion. *See Ross*, 578 U.S. at 641–42. In light of this intent, the Tenth Circuit correctly declined to interpret "prison conditions" in a manner that would exclude Petitioner's courthouse shooting from the reach of the PLRA. Pet. App. 21a.

In addition to being aligned with the text, history, and context of the PLRA, the Tenth Circuit's interpretation stays true to this Court's precedent. "Time and again, this Court has . . . reject[ed] every attempt to deviate . . . from [the PLRA exhaustion provision's] textual mandate." *Ross*, 578 U.S. at 639−40; *see also Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006); *Porter*, 534 U.S. at 520; *Booth v. Churner*, 532 U.S. 731 (2001). The common thread uniting these decisions is this

Court's unwillingness "to add unwritten limits" to the PLRA's textual requirement. *Ross*, 578 U.S. at 639. Far from contradicting this Court's guidance, the Tenth Circuit's decision faithfully applies it.

In arguing otherwise, Petitioner relies on a single footnote from *Porter* that he argues demonstrates this Court's skepticism over the relevance of § 3626(g)(2) to the interpretation of "prison conditions" in § 1997e. Pet. 11–12. But as the Tenth Circuit aptly observed, this Court "'express[ed] no definitive opinion on the proper reading of § 3626(g)(2)' as applied to § 1997e(a)." Pet. App. 13–14a (quoting *Porter*, 534 U.S. at 525 n.3). And *Porter*'s ultimate holding reinforces, rather than undercuts, the Tenth Circuit's decision. *See* Pet. App. 17–18a (discussing *Porter*).

2. The Petition does not allege a circuit split.

"A principal purpose" for which this Court uses its certiorari jurisdiction "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991) (citing Sup. Ct. R. 10.1). Here, however, no circuit split exists.

As the Tenth Circuit noted, no federal Circuit has adopted Petitioner's narrow reading of the PLRA. Pet. App. 17a. Petitioner does not argue otherwise. And rightly so. No conflict exists over the second question presented, let alone over the broader question of whether to adopt Petitioner's narrow reading of the PLRA. *See Ruggiero v. Cnty. of Orange*, 467 F.3d 170, 174 (2d Cir. 2006); *Witzke v. Femal*, 376 F.3d 744, 752–53 (7th Cir. 2004); *Alexander S. v. Boyd*, 113 F.3d

1373, 1381 (4th Cir. 1997), *abrogated on other grounds by Martin v. Hadix*, 527 U.S. 343 (1999).

B. Petitioner overstates the need for this Court's review.

With the Tenth Circuit's holding resting comfortably among this Court's precedent and the decisions of its sister circuits, the need for this Court's review dissipates. To nevertheless frame this case as exceptionally important, Petitioner resorts to a policy plea: absent this Court's corrective action, the Tenth Circuit's holding will throw congressionally-unintended obstacles in front of prisoner suits—something that may impact millions. *See* Pet. 14–15. But the Tenth Circuit's opinion achieves the PLRA's purpose; it does not thwart it.

PLRA exhaustion is not a pointless gauntlet through which prisoners must run on their way to relief. It achieves a major purpose of the PLRA: to improve the overall conditions of confinement by drawing immediate attention to prisoner treatment issues as they occur. *See* Pet. App. 18a. Indeed, as the Tenth Circuit noted, had Petitioner followed the applicable grievance procedure in this case, "he would have alerted prison officials that CDOC officers perhaps need additional training," or, "at the very least," would have drawn CDOC's attention to his situation. *Id.* at 18a–19a.

At the same time, Petitioner minimizes the negative implications of his position. Far from ensuring "that prisoner claims of illegal conduct by their custodians are fairly handled according to law," *Jones*, 549 U.S. at 203, Petitioner's interpretation would "[c]arv[e] out a wide exception for all incidents that

happen anywhere beyond the boundary of a prison[.]" Pet. App. 19a. For example, adopting Petitioner's position would mean that all transportation of prisoners to or from the prison would be deemed outside the zone of the PLRA. *Id.* Yet prisoners routinely are transported from prison. *See id.* Exempting exhaustion related to such incidents—regardless of whether the prison's grievance procedures would be adequate to address the concerns—makes little practical sense and does nothing to advance the PLRA's aims.

At bottom, Petitioner's argument that the Tenth Circuit's rule is bad policy because it will require futile exhaustion of claims unrelated to prison conditions is premised on a conclusion that no prisoner, including him, would have concluded that administrative exhaustion applied to this courthouse shooting. But, as Petitioner attempted to argue below, that situation could have implicated a well-established carve-out from the exhaustion requirement: "A prisoner need not exhaust remedies if they are not 'available.'" *Ross*, 578 U.S. at 636. The Tenth Circuit decision does not address this carve-out's application to Petitioner's case. Petitioner could have, but did not make this argument in the district court, and the Tenth Circuit declined to reach it. Pet. App. 25a.

In the end, Petitioner presents a narrow, fact-bound question that is unlikely to have the far-reaching impact he implies. Courthouse shootings involving prisoners by their custodians are, thankfully, rare. This Court need not expend its limited resources to address whether a courthouse shooting is a prison condition as that term is used in § 1997e(a).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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