No. 24-857

In the Supreme Court of the United States

BRIAN ESTRADA, PETITIONER,

v.

JACOB SMART

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

REPLY BRIEF FOR THE PETITIONER

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In *Perttu v. Richards*, this Court held that "as a matter of statutory interpretation … parties have a right to a jury trial on PLRA exhaustion when that issue is intertwined with the merits of a claim," but "express[ed] no view" on whether the Seventh Amendment independently protects the right to a jury trial on other factual issues of exhaustion. 145 S. Ct. 1793, 1800 (2025). Justice Barrett, in a dissent joined by Justices Thomas, Alito, and Kavanaugh, noted that the question of "whether the Seventh Amendment requires jury trials for *all* disputes about exhaustion … might be very difficult." *Id.* at 1809 (Barrett, J., dissenting). The four-Justice dissent noted that "the lower courts [had yet to] seriously consider" that difficult question. *Id.*

Petitioner Brian Estrada raised that difficult question before the Tenth Circuit—in his opening brief, his reply brief, and a petition for rehearing. Rather than seriously considering (or even mentioning) that constitutional question, the Tenth Circuit held that judges, not juries, can decide issues of PLRA exhaustion

that are not intertwined with the merits of a claim. This Court should grant the petition for a writ of certiorari, vacate the decision below, and remand the case for further proceedings to "seriously consider" whether a jury must decide factual issues related to exhaustion in light of *Perttu*.[1]

In the alternative, this Court should grant plenary review of the decision below. The PLRA's exhaustion provision applies only to suits "brought with respect to *prison conditions*." 42 U.S.C. § 1997e(a) (emphasis added). Congress did not use esoteric, technical terms; "prison conditions" means conditions associated with prisons. But the Tenth Circuit held that a courthouse shooting is nevertheless a "prison condition" on the conclusion that "the Logan County courthouse functioned as a 'prison.'" Pet. App. 15a. That logic is indefensible, and Respondent does not attempt to defend it.[2] So much so that summary reversal would be justified.

As this Court advised last term, "those whose lives are governed by law are entitled to rely on its ordinary meaning, not left to speculate about hidden messages." *Feliciano v. Dep't of Transp.*, 145 S. Ct. 1284, 1291 (2025). Mr. Estrada relied on the ordinary meaning of the words "prison conditions," and the Tenth Circuit faulted him for doing so. Because a courthouse is plainly not a prison, this Court should review (and reverse) the decision below.

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[1] The Petition for a Writ of Certiorari asked this Court to hold this case pending resolution of *Perttu*. Respondents—recognizing the potential impact of the *Perttu* decision—took several extensions and filed their opposition one month after this Court handed down *Perttu*.

[2] Respondent's opposition begins with an inflammatory recitation of allegations, most of which cannot be found in the record below and for which he offers no citation to the record. Respondent's version of the facts is irrelevant to the legal issue presented.

ARGUMENT

I. THIS COURT SHOULD GRANT, VACATE, AND REMAND IN LIGHT OF *PERTTU*

This Court regularly grants, vacates, and remands a case if "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." *Lawrence v. Chater*, 516 U.S. 163, 167 (1996). This is such a case. The Tenth Circuit determined that certain issues of fact related to exhaustion do not need to go to a jury without addressing the effect of the Seventh Amendment. There is a strong probability that decision would fundamentally differ after this Court's intervening decision in *Perttu*.

1.a. The opinion of the Court in *Perttu* requires courts to engage in a careful analysis when identifying the appropriate factfinder on issues related to exhaustion. The Court specified that "before inquiring into the applicability of the Seventh Amendment, [courts] *must* first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided." *Perttu*, 145 S. Ct. at 1800 (cleaned up) (emphasis added); *see also id.* at 1801 n.1.

In *Perttu*, this Court acknowledged that "[t]he PLRA is … 'silent on the issue' whether judges or juries should resolve factual disputes related to exhaustion," and that Perttu "rightly" did not attempt to argue that the PLRA requires that exhaustion disputes be resolved by judges. *Id.* at 1801. The Court noted that "other affirmative defenses, like statute of limitations … routinely go to the jury. And 'failure to exhaust was notably not added' to the PLRA's screening provisions, which require judges to dismiss cases on specified grounds." *Id.* (quoting *Jones v. Bock*, 549 U.S. 199, 214 (2007)). Such statements lie in stark contrast to the Tenth Circuit's cursory treatment of

exhaustion, citing *Pavey v. Conley*, 544 F.3d 739, 741 (7th Cir. 2008)—a decision *Perttu* abrogated—and referring to it as an "issue[] of judicial traffic control." Pet. App. 9a.

By setting forth the appropriate analysis to assess whether the PLRA can be construed to avoid constitutional doubt on jury questions of exhaustion, *Perttu* "changed or clarified the governing legal principles in a way that could possibly alter the decision" of the Tenth Circuit, making a GVR appropriate. *Flowers v. Mississippi*, 579 U.S. 913, 913 (2016) (Alito, J., dissenting).

b. *Perttu*'s four-Justice dissent highlights the need for a GVR. The four dissenting Justices recognized that "[t]he jury right conferred by the Seventh Amendment does not depend on the degree of factual overlap between a threshold issue and the merits of the plaintiff's claim." *Id.* at 1807 (Barrett, J., dissenting). The dissenting opinion also acknowledged that the question of the proper arbiter of issues of fact related to exhaustion implicates the Seventh Amendment and that answering the "very difficult" constitutional question would require a court "to confront challenging historical and methodological questions." *Perttu*, 145 S. Ct. at 1809 (Barrett, J., dissenting). The dissent invited the lower courts to "seriously consider[]" the question so the issue and corresponding legal arguments can develop prior to this Court's intervention. *Id.* At least four Justices of this Court view this question as unsettled and worthy of percolation, but the Tenth Circuit answered it without *any* constitutional analysis. The Tenth Circuit should be given the opportunity and encouragement to seriously consider the constitutional question, and the impact of the statutory reasoning employed by the majority, on remand.

2. Respondent does not dispute that Mr. Estrada squarely presented and preserved the Seventh Amendment's applicability to questions of fact related to exhaustion and that the Tenth Circuit determined who should decide such questions.[3] Nor does Respondent dispute that *Perttu* acknowledged the importance of that question and lower court percolation. And Respondent does not—because he cannot—dispute that the Tenth Circuit failed to consider the Seventh Amendment in its decision. Together, these factors make this an exemplary case for a GVR.

Respondent's only argument against a GVR is that *Perttu* was decided on narrower grounds. But this Court has repeatedly stated a GVR is appropriate where there is a "reasonable probability" the lower court would decide differently on reconsideration, *Wellons v. Hall*, 558 U.S. 220, 225 (2010) (quoting *Lawrence*, 516 U.S. at 167), including when, like here, the lower court "gave th[e relevant] question at most, perfunctory consideration," *id.* at 222. That standard is easily met here.

3. This case presents a factual dispute related to PLRA exhaustion. Respondent does not contest that Mr. Estrada preserved the argument that such a dispute exists. Since the moment Respondent moved for summary judgment for failure to exhaust, Mr. Estrada has argued that no administrative remedy was available to him because the CDOC policy does not reach a

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[3] Mr. Estrada argued the Seventh Amendment required a jury to hear questions of fact related to exhaustion, in his briefs, before this Court issued its decision in *SEC v. Jarkesy*, 603 U.S. 109 (2024). *Jarkesy* was decided after argument, shortly before the panel issued its opinion. When the Tenth Circuit issued an opinion that relied solely on the opinions of other circuits and did not even mention the Seventh Amendment, Mr. Estrada petitioned for rehearing in light of *Jarkesy* and the clarity it shed on the constitutional jury right.

courthouse shooting. In *Ross v. Blake*, this Court acknowledged that the availability of an administrative remedy could depend on "[t]he facts of th[e] case." 578 U.S. 632, 645 (2016). And the Court noted that where a litigant raises "probable arguments" on even a single question of unavailability, "his suit may proceed." *Id.* at 648.

The Court in *Ross* did not, however, declare before whom the case should proceed. Mr. Estrada argued that it should be before a jury, but both courts below disagreed. Respondent claims (at 9 n.2) that there was no "judge's resolution of a factual dispute over exhaustion" because the district court declined to hold an evidentiary hearing. But the district court still examined documentary evidence and concluded that "the trial court—not a jury—should act as a factfinder and resolve any factual disputes." Pet. App. 33a. The court then decided that the CDOC Policy reached a courthouse shooting. Pet. App. 38a.

As argued before the Tenth Circuit, the district court was incorrect to do so, especially because it failed to consider whether "the evidence [wa]s such that a reasonable jury could return a verdict for" Mr. Estrada. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The district court thus resolved a factual dispute related to exhaustion (the question of whether there was an available remedy to exhaust), and the Tenth Circuit did not give serious weight to whether the Seventh Amendment permitted a judge, not a jury, to make that determination.

4. The equities favor a GVR. If this Court allows the Tenth Circuit's decision to stand, that decision will be precedential law in the Tenth Circuit. Future PLRA plaintiffs and district court judges will be bound by that decision—one that failed to even acknowledge the constitutional right to a trial by jury—and future Tenth

Circuit panels will not be able to revisit it. *See United States v. Harbin*, 56 F.4th 843, 846 n.2 (10th Cir. 2022) (one panel "may not overrule the decision of a previous panel").

The four dissenting Justices in *Perttu* recognized the importance of allowing the lower courts to "seriously consider[]" whether the Seventh Amendment requires that issues of fact related to exhaustion be decided by a jury. 145 S. Ct. at 1809 (Barrett, J., dissenting). Such percolation is hindered if the Tenth Circuit's decision is left undisturbed. A GVR furthers the important institutional interest identified by the dissent—facilitating lower court percolation. The equities thereby favor a GVR here, where it will benefit future litigants and the development of law without this Court's immediate review.

II. IF THIS COURT DOES NOT GVR, PLENARY REVIEW OR SUMMARY REVERSAL IS WARRANTED

In the alternative, the Court should grant plenary review because the decision below is indefensibly wrong. The PLRA's exhaustion provision "speaks in unambiguous terms opposite to what the [Tenth] Circuit said," *Ross*, 578 U.S. at 638: "No action shall be brought *with respect to prison conditions* … by a prisoner … until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a) (emphasis added). The Tenth Circuit effectively erased the emphasized words.

The PLRA was passed to prevent unmeritorious suits and to encourage pre-litigation resolution of prison complaints. In line with that goal, inmates must navigate the statute's requirements before (and while) filing a lawsuit. As this Court's many PLRA-interpretation cases show, that is not an easy task, even for highly trained lawyers and judges. It is thus critical that prisoners subject to the PLRA, most of whom lack formal legal

training, "are entitled to rely on its ordinary meaning, not left to speculate about hidden messages." *Feliciano*, 145 S. Ct. at 1291.

The ordinary meaning of the exhaustion provision is that inmates may not bring *prison condition* suits until they exhaust available administrative remedies. "Linguistically, [this] reading leaves no part of the statute ignored or left without work to do." *Id.* at 1294. If, as Respondent argues, an inmate has to exhaust a suit about a courthouse shooting or other complaints unrelated to prison conditions, Congress's inclusion of the qualifier "with respect to prison conditions" would be superfluous.

Contrary to Respondent's contentions, Mr. Estrada is not asking for the Court to stray from the PLRA's textual mandate; he is asking the Court to honor it. He is not, and has never, asked a court to apply a strict geographic test. He instead asks that courts be required to assess whether the incident that gave rise to a complaint fits within the ordinary meaning of the term "prison conditions." In other words, he is asking the PLRA "be enforced as written." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 525 (2018).

Just as *Ross* ensured courts gave meaning to the words "as are available" in the exhaustion provision, this case asks the Court to give meaning to the words "brought with respect to prison conditions," as is required by the "basic and unexceptional rule that courts must give effect to the clear meaning of statutes as written … giving each word its ordinary, contemporary, common meaning." *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017) (internal quotation marks omitted). The PLRA does not require all suits brought by prisoners be exhausted, nor does it require all suits brought against prison employees be exhausted. It *only* requires suits brought with respect to prison conditions be exhausted. A

suit alleging excessive force during a courthouse shooting is not a suit about prison conditions.

This Court's rules contemplate the granting of a writ of certiorari when a court of appeals "has so far departed from the accepted and usual course of judicial proceedings" that this Court's review is required. S. Ct. R. 10(a). The Tenth Circuit regrettably met that standard by announcing that when Congress said "prison conditions," it intended to include a courthouse shooting. This Court should grant certiorari to summarily reverse or hear argument on the meaning of the PLRA's plain text.

CONCLUSION

The petition should be granted, the court of appeals' judgment vacated, and the case remanded in light of *Perttu*. Alternatively, the petition should be granted for plenary consideration or summary reversal.

Respectfully submitted.

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