No. 19-867

In the Supreme Court of the United States

SHELLA A. KHATRI, M.D., ET AL.,
Petitioners

v.

KAREEM GARRETT, ET AL.,
Respondents

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

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania

SEAN A. KIRKPATRICK
Senior Deputy Attorney General
Counsel of Record

HOWARD G. HOPKIRK
Senior Deputy Attorney General

DANIEL B. MULLEN
Deputy Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 705-2331

QUESTION PRESENTED

The Prison Litigation Reform Act (PLRA) provides: "No 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). The Courts of Appeals are split on how to apply this provision to plaintiffs who bring an action while incarcerated, but file an amended complaint after release from prison. Two Courts of Appeals, including the Third Circuit, hold that an amended pleading by a released prisoner "cures" the failure to exhaust. Four Courts of Appeals hold that release *pendente lite* does not excuse a failure to exhaust because superseding allegations cannot change the status of the prisoner at the time he "brought" the unexhausted claim. Both sides of this split interpret *Jones v. Bock*, 549 U.S. 199 (2007), as compelling their divergent holdings.

The question presented, as stated by Petitioners, is as follows:

If a prisoner fails to exhaust administrative remedies before filing a lawsuit, does Subsection 1997e(a) of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), mandate dismissal of the unexhausted claims, or may the prisoner cure his failure to exhaust by filing an amended complaint after his release from prison?

PARTIES TO THE PROCEEDING

Respondents Debra Younkin, Janet Pearson, Steven Glunt, Nurse Lori, Nurse Debbie, Nurse Rodger, Nurse John, Nurse Hanna, Superintendent Cameron, Deputy Superintendent David Close, Deputy Superintendent Hollinbaugh, Doretta Chencharick, Joel Barrows, James Morris, Peggy Bauchman, Tracey Hamer, Captain Brumbaugh, Captain Miller, Lt. Shea, Lt. Horton, Lt. Lewis, Lt. Glass, L.S. Kerns-Barr, F. Nunez, Jack Walmer, M.J. Barber, Mr. Shetler, Ms. Cogan, Mr. Little, Sgt. Snipes, Sgt. James, Sgt. Young, Medical Officer London, Medical Officer Owens, Officer Garvey, and Officer Uncles (collectively the DOC Defendants) are officers or employees of the Pennsylvania Department of Corrections (DOC) and were defendants-appellees in the proceedings below. The DOC Defendants respectfully submit this brief in support of the Petition for Writ of Certiorari under Sup. Ct. R. 12.6.

Petitioners Shella A. Khatri, M.D., Wexford Health Sources, Inc., Muhammad Naji, M.D., Deborah Cutshall, Casey Thornley, P.A., and Joe Nagel, P.A. are medical providers for the DOC (collectively the Medical Defendants). They were defendants-appellees in the proceedings below.

Respondent Kareem Garrett was an incarcerated prisoner held in the custody of the DOC. He was the plaintiff-appellant in the proceedings below.

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STATEMENT OF THE CASE

A. The Prison Litigation Reform Act

Congress enacted the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e *et seq.*, amidst a sharp rise in prisoner litigation in the federal courts. *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (citing *Alexander v. Hawk*, 159 F.3d 1321, 1324-25 (11th Cir. 1998)). Through the PLRA, Congress endeavored to stem the "disruptive tide of frivolous prisoner litigation" by decreasing the quantity and improving the quality of inmate cases. *Woodford*, 548 U.S. at 84; *see also Jones v. Bock*, 549 U.S. 199, 203 (2007) ("What this country needs, Congress decided, is fewer and better prisoner suits") (citation omitted).

Congress was not writing on a blank slate, however. Under the PLRA's precursor, the Civil Rights of Institutionalized Persons Act, district courts had broad discretion, though no obligation, to require inmates to exhaust administrative remedies before initiating litigation. *Booth v. Churner*, 532 U.S. 731, 739 (2001); *see also Woodford*, 548 U.S. at 84. Congress deemed this discretion problematic and replaced it with an "invigorated" exhaustion provision, which stripped district courts of their discretion by making exhaustion mandatory in all cases challenging prison conditions. This mandatory exhaustion requirement became a "centerpiece" of the PLRA. *Ibid.*

The rationale for strengthening the exhaustion requirement had "a great deal to do with the nature of prison litigation." *Nyhuis v. Reno*, 204 F.3d 65, 73 (3d Cir. 2000). Inmate claims are often "untidy, repetitious, and redolent of legal language" and require courts to expend "significant and scarce judicial resources to review and refine the nature of the legal claims presented." *Id.* at 74; *see also Alexander*, *supra* at 1362 n.11 ("Prisoners' complaints * * * generally contain a lengthy layman's recitation of complaints about the prison without articulating clearly the legal causes of action in issue and necessitating significant expenditure of judicial resources to

review and refine the nature of the legal claims"). Mandatory exhaustion addresses this specific problem in several ways, while elevating the overall goals of the PLRA.

First, mandatory exhaustion ensures that an administrative record is developed in every inmate case. This helps focus and clarify the issues for the court, making it easier to distinguish between frivolous and non-frivolous claims. *Porter v. Nussle*, 534 U.S. 516, 525 (2002); *see also Jones*, 549 U.S. at 203-04.

Second, mandatory exhaustion may prompt corrective action in response to an inmate's grievance and satisfy the inmate, thereby obviating the need for litigation. *Id.* (citing *Booth*, 542 U.S. at 737).

Third, by affording "'corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case,'" exhaustion eliminates "unwarranted federal-court interference with the administration of prisons." *Woodford*, 548 U.S. at 93 (quoting *Porter*, 534 U.S. at 525).

Fourth, the PLRA in general, and the mandatory exhaustion provision in particular, promotes judicial efficiency and economy and improves access to the courts for all litigants, including inmates seeking to bring non-frivolous claims. *Jones*, 549 U.S. at 203 (Congress sought to ensure "that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit"); *see also* 141 Cong. Rec. S14408-01, S14413 (daily ed. Sept. 27, 1995) (statement of Sen. Dole) ("Frivolous lawsuits filed by prisoners tie up the courts, waste valuable legal resources, and affect the quality of justice enjoyed by law-abiding citizens").

With these considerations in mind, Congress barred courts from conducting case-by-case inquires until after a prisoner had presented his or her claims to a particular administrative remedy program. *Alexander*, 159 F.3d at 1326 n.11.

B. Proceedings Below

1. In February 2014, while incarcerated in a Pennsylvania Department of Corrections (DOC) facility, Kareem Garrett filed a *pro se* lawsuit against two separately represented groups of individuals: (1) various DOC officials and employees (DOC Defendants); and (2) private medical professionals under contract with the DOC to provide medical services for inmates (Medical Defendants).[1] On the first page of his complaint, Garrett acknowledged that he had not fully exhausted his administrative remedies before bringing suit. Pet. App. 5.[2]

Garrett alleged that he was denied adequate health care when his previously prescribed walker, wheelchair, and psychiatric medication were discontinued. Pet. App. 4. These decisions purportedly gave rise to further injuries and prevented Garrett from accessing medication and food. *Ibid.* Garrett also asserted that medical personnel conducted a rectal exam without his consent. *Ibid.*

Prior to effectuating service, Garrett filed an amended complaint adding 20 defendants. Pet. App. 60. Four days later, Garrett filed a motion to amend, which the District Court

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[1] "Medical Defendants" includes Shella Khatri, M.D., a psychologist who was separately represented before the District Court and the Court of Appeals, but now has common counsel with the rest of the Medical Defendants.

[2] DC-ADM 804, the DOC's inmate grievance policy, establishes a three-step grievance process for inmates and sets forth procedures an inmate must take both to initiate a grievance and obtain further review if dissatisfied with an initial decision. First, an inmate is required to legibly set forth all facts and identify all persons relevant to his claim in a grievance which will then be subject to an initial review. Second, after the initial review by a grievance officer, the inmate has the opportunity to appeal for a second level of review. If dissatisfied with the step-two decision, an inmate can appeal to the DOC Secretary's Office of Inmate Grievances and Appeals (SOIGA) for a final review of the grievance. *See Spruill v. Gillis*, 372 F.3d 218, 232 (3d Cir. 2004); *see also Jackson v. Beard*, 704 Fed. Appx. 194, 196 n.4 (3d Cir. 2017).

granted. *Ibid.* Three months after that, Garrett filed his second amended complaint naming 40 defendants. *Ibid.* Following service, all defendants moved to dismiss. *Ibid.*

After Garrett had been granted several extensions of time to respond to the motions to dismiss, he requested that the District Court stay the case because he was scheduled to be released from prison in March 2015. *Ibid.* The District Court granted this request and stayed the case until July 2015. *Ibid.* Thereafter, Garrett sought yet another extension and the District Court ordered him to respond to the motions to dismiss—which had been pending for over a year—by early December 2015. *Ibid.*

Garrett did not file responses to the motions as directed. Instead, in late January 2016, he filed a motion for leave to file a third amended complaint, which was granted. Pet. App. 61. In his third pleading, which exceeded 90 paragraphs and added more than 30 defendants, Garrett re-alleged that he was denied adequate health care, and asserted retaliation claims that purportedly arose after he had brought suit nearly two years prior. Pet. App. 9, 61.

Relevant to the instant petition, Medical Defendants moved to dismiss the third amended complaint, raising Garrett's failure to exhaust his administrative remedies prior to filing suit, as required by Subsection 1997e(a) of the PLRA. Pet. App. 61.[3] As failure to exhaust is an affirmative defense, the District Court converted Medical Defendants' motion to dismiss into a motion for summary judgment limited to the issue of exhaustion and permitted the parties to submit additional briefing and evidence. *Ibid.*

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[3] DOC Defendants did not raise Garrett's failure to exhaust, and instead, filed a motion to dismiss under Federal Rule of Civil Procedure 8, which the District Court granted. On appeal, the Third Circuit reversed. Pet. App. 38-50. Although Garrett's claims against DOC Defendants are not before this Court, we support the Petition for Writ of Certiorari because the Third Circuit's PLRA holding will impact prospective cases and inhibit the Commonwealth's ability to effectively manage its prisons.

Garrett argued that he did not have to exhaust any of his claims because his third amended complaint was filed after he was released from prison. The District Court rejected this argument, concluding that an inmate's status as a prisoner for PLRA purposes is determined at the time he files his original complaint. Pet. App. 64, 76-77. Thus, it entered judgment in favor of Medical Defendants.[4]

2. On appeal, the Third Circuit reversed, holding that Garrett's failure to exhaust his administrative remedies was "cured" by his third amended pleading because it was filed after he was released from prison. Pet. App. 38.

The Court of Appeals construed Garrett's third amended pleading as both an amended complaint under Federal Rule of Civil Procedure 15(a), as it raised additional claims arising out of the events described in his original complaint, and a supplemental complaint under Rule 15(d), as it also presented new facts and claims that arose after Garrett filed the original complaint. Pet. App. 16. In the Court of Appeals' view, an amended pleading under Rule 15(a) "renders the original pleading a nullity," and the plaintiff's status at the time of the amendment, not the original pleading, determines the applicability of the PLRA. Pet. App. 17-18. Further, the Court of Appeals concluded that Rule 15(d), which permits supplementation "even though the original pleading is defective in stating a claim or defense," *see* Fed. R. Civ. P. 15(d), operates in conjunction with Rule 15(a) and "can be

[4] As noted, the District Court also granted DOC Defendants' motion to dismiss, but gave Garrett a final opportunity to amend his claims against DOC Defendants only. Pet. App. 82-83. Though he was not given leave to amend his claims against Medical Defendants, Garrett's fourth amended complaint nonetheless asserted claims against both Medical Defendants and DOC Defendants. Pet. App. 62-63. While the fourth amended complaint technically became Garrett's operative pleading, as explained *infra*, the outcome determinative question for the Court of Appeals was whether Garrett's third amended complaint—his first post-release pleading—cured his failure to exhaust available administrative remedies. Pet. App. 16-23.

employed to allege subsequent facts to cure a deficient pleading." Pet. App. 18-21. Relying on this Court's pronouncement in *Jones*, 549 U.S. at 112, that "courts should generally not depart from the usual practice under the Federal Rules," the Third Circuit determined that Garrett's third amended pleading cured his failure to exhaust available administrative remedies. Pet. App. 29-30, 38.

The Court of Appeals acknowledged that a recent decision by the Tenth Circuit, *May v. Segovia*, 929 F.3d 1223 (10th Cir. 2019), took a contrary view of the operation of Rule 15 as it relates to PLRA exhaustion. The Tenth Circuit determined that an amended complaint does not render the original complaint nugatory for all purposes, because Rule 15(c) permits an amended complaint to relate back to the original complaint. *May*, 929 F.3d at 1228. Thus, an amended complaint "supersedes an original complaint's *allegations* but not its *timing*." *Id.* at 1229. The Tenth Circuit further concluded that its interpretation squared with this Court's dictate in *Jones* that the PLRA applies to particular claims, rather than entire actions. *Id.* at 1227. The Third Circuit determined, however, that this approach conflicted with its case law construing Rule 15. Pet. App. 23 n.21 (citing *T Mobile Ne. LLC v. City of Wilmington, Del.*, 913 F.3d 311 (3d Cir. 2019)).

REASONS FOR GRANTING THE PETITION

The PLRA's exhaustion provision provides: "No 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). The text of Subsection 1997e(a) makes exhaustion mandatory in all prison conditions cases and contains only one exception: A prisoner need not exhaust when administrative remedies are not "available." *See Ross v. Blake*, 136 S.Ct. 1850, 1856-58 (2016).

Congress intentionally designed a strict exhaustion requirement because inmates have unique incentives to file meritless or frivolous lawsuits; *e.g.*, ample "free time on their

hands," *Roller v. Gunn*, 107 F.3d 227, 234 (4th Cir. 1997), harassing prison officials, *Nasim v. Warden, Md. House of Correction*, 64 F.3d 951, 953–54 n.1 (4th Cir. 1995) (en banc), or simply "as a means of gaining a 'short sabbatical in the nearest Federal courthouse,'" 141 Cong. Rec. S7498-01, S7526 (daily ed. May 25, 1995) (statement of Sen. Kyl quoting *Cruz v. Beto*, 405 U.S. 319, 327 (1972) (Rehnquist, J. dissenting). Congress enacted the PLRA to address these incentives and halt the disruptive flood of frivolous inmate suits, making mandatory exhaustion a centerpiece of the statute. *Woodford*, 548 U.S. at 97; *Jones*, 549 U.S. at 203.

The Court of Appeals has effectively undone the restraints enacted by Congress to combat the negative incentives prisoners have to file frivolous lawsuits. It is undisputed that Garrett, while incarcerated, failed to properly exhaust available administrative remedies before filing suit. The Court of Appeals nonetheless excused this failure because, nearly two years after his initial complaint, Garrett filed an amended pleading after being released from prison. Pet. App. 18-23. This holding engrafts a new exception onto the PLRA's mandatory exhaustion requirement: A prisoner need not properly exhaust available administrative remedies if he delays the proceedings long enough to be released from prison and files an amended pleading.

This new exception to exhaustion is built upon a fundamental misreading of this Court's holding in *Jones v. Bock*,, *supra*, and is contrary to the text and purpose of the PLRA. The Third Circuit's ruling widens an acknowledged split among the circuit courts. *Compare May*, 929 F.3d at 1233, *with Jackson v. Fong*, 870 F.3d 928 (9th Cir. 2017). And the new exception creates a disincentive for inmates to seek administrative redress before filing suit, functionally making exhaustion optional for the 39% of Commonwealth inmates released each year. This, in turn, will make prison administration inherently more difficult.

This Court's review is necessary to resolve this conflict, clarify the contours of *Jones v. Bock*, prevent further erosion of the PLRA's mandatory exhaustion provision, and reinstate an important penological tool relied upon by prison officials to maintain the safety of their institutions. *See* Sup. Ct. R. 10(a), (c).

I. This Court Should Settle Whether Federal Law Excuses an Inmate from Complying with the PLRA's Mandatory Exhaustion Provision if an Amended Pleading is Filed After Release.

A. The PLRA's mandatory exhaustion provision unambiguously requires inmates to exhaust administrative remedies before invoking the judicial process.

The PLRA's mandatory exhaustion provision is clear and unambiguous; it prohibits an inmate from bringing any action—*i.e.*, invoking or commencing judicial proceedings—before fully and properly exhausting administrative remedies. Nevertheless, because no precedent from this Court has squarely answered whether the PLRA excuses the exhaustion requirement where an inmate files an amended pleading after being released from prison, the circuits have split on this important unsettled federal question.

The Third Circuit's resolution of this unsettled question in the affirmative runs afoul of the governing principles articulated by this Court. In *Ross v. Blake*, this Court clarified that the PLRA's exhaustion provision contains only one textual exception—where administrative remedies are unavailable to the inmate. 136 S.Ct. at 1856 ("But aside from that one exception, the PLRA's text suggests no limits on an inmates obligation to exhaust"). In reaching that conclusion, this Court distinguished between judicially developed exhaustion doctrines, which are inherently amenable to judge-made exceptions, and mandatory exhaustion regimes established by statute, which foreclose judicial discretion. *Id.* at 1857 (citing, *inter alia*, *McNeil v. United States*, 508 U.S.

106, 111, 113 (1993)). Indeed, as observed in *Ross*, this Court has rejected every effort by a lower court to engraft additional exceptions onto the PLRA's mandatory exhaustion provision. *Ibid.*; *see also Booth*, 532 U.S. at 741 n.6 (rejecting "futility" exception to Subsection 1997e(a), stating "we will not read futility or other exceptions into statutory exhaustion where Congress has provided otherwise"); *Porter*, 534 U.S. at 520 (holding that the PLRA does not contain an exception for excessive force claims, stating the PLRA's "exhaustion requirement applies to all prisoners seeking redress for prison circumstances or occurrences"); *Woodford*, 548 U.S. at 91-92 (holding that the PLRA does not include an exception for constitutional claims).

This Court's favorable citation to *McNeil v. United States*, *supra*, is particularly instructive. In *McNeil*, this Court interpreted the Federal Tort Claim Act's (FTCA) mandatory exhaustion provision, which provides that an "action shall not be instituted upon a claim against the United States for money damages" unless the claimant first exhausted his or her administrative remedies. 508 U.S. at 107 (quoting 28 U.S.C. § 2675(a)). There, the claimant failed to exhaust his administrative remedies prior to bringing suit, but did so before substantial progress had been made in the litigation. *Ibid.* Concluding that the word "institute" was synonymous with the words "begin" and "commence," this Court held that the most natural reading of the FTCA indicated that Congress intended to require complete exhaustion "before invocation of the judicial process." *Id.* at 112. Because the plaintiff invoked the judicial process, and thus "instituted" the action, prior to exhausting, his subsequent completion of the administrative process did not absolve his initial filing defect. *Ibid.* In so holding, this Court emphasized that "[t]he interest in orderly administration of this body of litigation is best served by adherence to the straightforward statutory command." *Ibid.*; *see also Hallstrom v. Tillamook County*, 493 U.S. 20 (1989) (holding that when the Resource Conservation and Recovery Act of 1976 stated that "no action may be commenced," it

meant what it said—no action shall be *commenced*, not no action shall be *prosecuted*) (quoting 42 U.S.C. § 6972(b)(1) (1982 ed.)).

Applying these governing principles, the plain and ordinary meaning of the PLRA's mandatory exhaustion provision must be given force and effect, while judicially crafted exceptions to this requirement are prohibited. Full and proper exhaustion, therefore, must occur *prior* to invoking judicial process. As Garrett had not properly exhausted available administrative remedies before invoking judicial process, he failed to comply with the PLRA's straightforward textual mandate.

The Eleventh Circuit's analysis of the specific legal issue in this case is consistent with these governing principles. In *Harris v. Garner*, 216 F.3d 970 (11th Cir. 2000) (*en banc*), the Eleventh Circuit considered the applicability of the PLRA when a plaintiff files a lawsuit while still confined in prison, but files an amended pleading upon being released from prison. The specific PLRA provision at issue in that case, 42 U.S.C. § 1997e(e), provides that "[n]o Federal civil action may be brought by a prisoner * * * for mental or emotional injury suffered while in custody without a prior showing of physical injury." *Ibid. Harris* thus hinged upon the meaning of the word "brought" in the PLRA. *Id.* at 973 ("The dispositive question is whether 'bring' means to commence or start a lawsuit, or instead means to maintain or continue it to conclusion").

In the Eleventh Circuit's view, the concept of "bringing an action" has a well-established meaning at law and refers to the filing or commencement of a lawsuit, not to its continuation. *Id.* at 973-74 (citing, *inter alia*, Black's Law Dictionary 192 (6th ed. 1990)). It is a longstanding principle that "[a] suit is *brought* when in law it is *commenced*[.]" *Goldenberg v. Murphy*, 108 U.S. 162, 163 (1883) (emphasis added). Relying on the precept that Congress knows the settled legal definition of the words it uses, and intends to use those words in the

accepted sense, the Court of Appeals applied the plain and ordinary meaning of the phrase "brought" and determined that the inmate could not obtain relief for mental or emotional injuries without first showing physical injury. *Ibid.*

The Eleventh Circuit noted in *Harris* that its interpretation of the word "brought" in Subsection 1997e(e) would apply equally to the exhaustion provision in Subsection 1997e(a). *Ibid.*; *see also Commissioner v. Keystone Consol. Industries, Inc.*, 508 U.S. 152, 159 (1993) ("[I]dentical words used in different parts of the same act are intended to have the same meaning") (citation omitted). Indeed, the Eleventh Circuit later extended its holding in *Harris* to the mandatory exhaustion provision, concluding that "courts lack discretion to waive the exhaustion requirement." *Smith v. Terry*, 491 Fed. Appx. 81, 83 (11th Cir. 2012).[5]

The Eleventh Circuit's sound reasoning comports with well-settled precepts of statutory construction, the text of the PLRA, and this Court's decisions in *Ross* and *McNeil*.

B. *Jones v. Bock* does not support, and indeed undermines, the Court of Appeals' new exception.

In contrast to the Eleventh Circuit's fidelity to the PLRA's text, the Third Circuit ignored what this Court said in *Ross* and *McNeil*, and rewrote the PLRA to include an exception for post-release amended pleadings. The Third Circuit justified its departure from the plain and ordinary meaning of the statute through a misplaced reliance on this Court's decision in *Jones v. Bock*, and its own flawed interpretation of Rule of Civil Procedure 15.

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[5] The Third Circuit brushed aside the Eleventh Circuit's reasoning on the grounds that it was decided prior to this Court's decision in *Jones v. Bock*. Pet. App. 37-38. The Third Circuit overlooked that the Eleventh Circuit reaffirmed its interpretation in *Smith v. Terry*, *supra*, a post-*Jones v. Bock* decision. Further, as explained *infra*, the Third Circuit's decision evidenced a misapprehension of this Court's core holding in *Jones*.

Unlike this Court's decisions in *Ross*, *Booth*, *Porter*, and *Woodford*, *Jones v. Bock* did not involve a lower court's attempt to impose a judge-made exception upon the PLRA's exhaustion requirement. Rather, *Jones* involved the exact opposite scenario, namely, the Sixth Circuit's attempt to impose additional hurdles upon inmates beyond the strictures of the PLRA. *See Ross*, 136 S. Ct. at 1857 n.1 (distinguishing *Jones* from *Booth*, *Porter*, and *Woodford*). Rather than view *Jones* through that lens, the Third Circuit selectively focused upon its favorite passages and phrases from this Court's opinion, removing *Jones* from all meaningful context. Unsurprisingly, the Court of Appeals' failure to properly understand *Jones* resulted in a holding that directly contravenes its fundamental dictate.

In *Jones*, the Sixth Circuit had, *inter alia*, interpreted the phrase "[n]o action shall be brought" in Subsection 1997e(a) to require dismissal of an entire inmate suit that included a mix of exhausted and non-exhausted claims. 549 U.S. at 219. The Sixth Circuit reasoned that if Congress had intended to enable courts to dismiss unexhausted claims only, while retaining the balance of the lawsuit, it would have used the word "claim" rather than "action" in the PLRA. *Ibid. Jones* thus turned on the meaning of the word "action" as used in the PLRA.

In rejecting the Sixth Circuit's analysis, this Court observed that statutory references to an "action" have never been "read to mean that every claim included in an action must meet the pertinent requirement before the 'action' may proceed." *Id.* at 221 (citations omitted). Rather, statutes must be read in light of the longstanding procedural norm that when a complaint has both good and bad claims "only the bad claims are dismissed; the complaint as a whole is not." *Ibid.* (internal brackets omitted and citation omitted). Concluding that it could not glean Congressional intent to depart from this norm from the simple use of the term "action," a commonly used term that appears in many federal statutes, this Court held

that the PLRA did not enable dismissal of an entire action merely because it contained a mix of exhausted and unexhausted claims. *Ibid*.[6] Thus, this Court clarified that the PLRA applies to particular claims, not entire actions.

Overlooking this central principle of the holding, the Third Circuit seized upon *Jones*' description of the phrase "[n]o action shall be brought" in the PLRA as "boilerplate" to justify for departing from the ordinary meaning of PLRA's straightforward statutory mandate. Pet. App. 29, 37. This was incorrect for several reasons.

First, *Jones* turned on the meaning of the word "action" in Subsection 1997e(a), *see* 549 U.S. at 220-24, rather than "brought," the operative word at issue in the instant case. As noted *supra*, "brought" refers to the invocation or commencement of a judicial proceeding, not its continuation. *McNeil*, 508 U.S. at 112; *Harris*, 216 F.3d at 973-74.

Second, this Court describing the phrase "[n]o action shall be brought" as "boilerplate" did not render the phrase meaningless for all purposes. Rather, the phrase being "boilerplate" merely meant that it could not be interpreted as Congressional intent to depart from the longstanding procedural norm that when an action contains a combination of "good and bad claims," the bad claims are dismissed, but the complaint as a whole is not. *Jones*, 549 U.S. at 221.

Third, and perhaps most importantly, the Court of Appeals' misapprehension of *Jones* caused it to improperly conflate all of Garrett's claims into a single action for PLRA purposes, rather than treat each claim individually as *Jones* mandates. By focusing exclusively upon selective parts of the *Jones* opinion, the Third Circuit missed the central holding of

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[6] This Court also rejected the Sixth Circuit's holding that PLRA exhaustion was a pleading requirement, rather than an affirmative defense, and its holding that an inmate's grievance must identify every individual who is later named in the lawsuit. *Jones*, 549 U.S. at 205-05. This Court determined that these rules were not required by the PLRA. *Id*. at 203.

that decision and created a new rule that treats exhausted and unexhausted claims the same.

The Court of Appeals' error in this regard was compounded by its exceedingly constrained reading of Rule 15. Relying on this Court's admonishment in *Jones* that "courts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns," *see Jones*, 549 U.S. at 212, the Court of Appeals concluded that Rule 15 cures a failure to exhaust because Subsection (a) "renders the original pleading a nullity," *see* Pet. App. 17, and Subsection (d) permits supplementation "even though the original pleading is defective in stating a claim or defense," *see* Pet. App. 19 (quoting Fed. R. Civ. P. 15(d)).[7] This crabbed reading of Rule 15 has been specifically rejected by other appellate courts.

In *May v. Segovia*, 929 F.3d 1223 (10th Cir. 2019), the Tenth Circuit articulated the flaws in this reasoning. That Court of Appeals correctly determined that an amended complaint does not render "the original complaint 'of no legal effect' for all purposes or else Rule 15(c) would be null." *Id.* at 1228. Rather, Rule 15(c) "expressly contemplates an unsuperseded original complaint as to timing, *see* Rule 15(c)(1)(a), and for determining when an action was commenced or a claim was brought[.]" *Ibid.* Further, the

[7] The Third Circuit cited *Matthews v. Diaz*, 426 U.S. 67 (1976) to support its conclusion that a supplemental pleading under Rule 15(d) can cure a defective initial pleading. Pet. App. 19. Critically, *Matthews* involved a statute that made exhaustion a non-waivable condition of jurisdiction. *Matthews*, 426 U.S. at 75 (citing 42 U.S.C. § 405(g)). Like all jurisdictional prerequisites, Subsection 405(g) included a pleading requirement that could be satisfied only by changing the allegations in the complaint. *See May*, 929 F.3d at 1229. Conversely, PLRA exhaustion is an affirmative defense, not a pleading requirement, *see Jones*, 549 U.S. at 216, and the dispositive inquiry under the PLRA relates to the plaintiff's status at the time the plaintiff brought the claim, rather than the sufficiency of the plaintiff's allegations. *May*, *supra*. *Matthews* thus lends no support to the Third Circuit's proposition.

Tenth Circuit accurately perceived that under *Jones*, "the PLRA's imperative is properly understood to apply to *claims* and not entire actions." *Id*. at 1227 (emphasis in original). Therefore, the question under *Jones* is whether the plaintiff was an inmate when he "brought" the claim at issue, *i.e.*, when the claim "first entered the litigation." *Id.* at 1227-28.

In short, Subsection 1997e(a) means what it states: Available administrative remedies must be exhausted *before* an inmate may commence judicial process. The Third Circuit's judge-made "cure" to the PLRA's mandatory exhaustion requirement ignores the governing principles announced by this Court and turns this requirement on its head. The Court should review and correct this error, settling this important question of federal law. *See* Sup. Ct. R. 10(c).

II. This Court Should Resolve the Circuit Split Over Whether an Inmate's Unexhausted Claims Can be Cured by Filing an Amended Pleading After Release from Prison.

The Third Circuit's fundamental misreading of *Jones* widens a split among the circuits on whether a prisoner may cure a failure to exhaust by filing an amended pleading after release from prison—a split it recognized in its opinion, Pet. App. 23 n.21.

The Fifth, Sixth, Tenth, and Eleventh Circuits agree that no such exception exists. In the Eleventh Circuit, a plaintiff's status when he commenced the lawsuit is a historical fact that cannot be changed through a Rule 15 amendment at a later point during the litigation. *Harris*, 216 F.3d at 975, 982. Similarly, both the Fifth and Sixth Circuits hold that a prisoner's "release during the pendency of the suit does not relieve him the obligation to comply with 42 U.S.C. § 1997e." *Williams v. Henagan*, 595 F.3d 610, 619 (5th Cir. 2010); *Cox v. Mayer*, 332 F.3d 422, 425 (6th Cir. 2003). Likewise, although the Seventh Circuit has not yet addressed this issue directly, that circuit has consistently held that "a plaintiff's status as a 'prisoner'" for purposes of Subsection 1997e(a) "is

to be determined as of the time he brought the lawsuit." *Dixon v. Page*, 291 F.3d 485, 488 (7th Cir. 2002); *Stites v. Mahoney*, 594 Fed. Appx. 303, 304 (7th Cir. 2015) ("All that matters * * * is that he was incarcerated when he initiated this lawsuit, which is the relevant point of analysis in applying § 1997e(a)").[8]

The Tenth Circuit specifically addressed the interplay between the PLRA exhaustion provision and Rule 15, concluding that an "amended complaint * * * supersedes the original complaint's *allegations* but not its *timing*," or otherwise, "Rule 15 (c) would be null." (emphasis in original). *May*, 929 F.3d at 1229. A plaintiff's status as prisoner, therefore, is fixed when the unexhausted claim is first alleged and that status is not cured through an amended complaint under Rule 15(a). *Id.* at 1228-29. The Tenth Circuit distinguished, however, a supplemental complaint under Rule 15(d) filed by a plaintiff after release from prison and raising new claims that occurred after the date of the pleading to be supplemented. Those claims would not be subject to the exhaustion requirement. *Id.* at 1232.

As discussed above, the Third Circuit acknowledged these contrary holdings by the other circuit courts but, in misreading *Jones*, rejected them. Pet. App. 23 n.21, 37-38. The Third Circuit instead adopted the reasoning of the Ninth Circuit in *Jackson v. Fong*, 870 F.3d 928 (9th Cir. 2017). In that case, the Ninth Circuit held that plaintiffs released during the pendency of their litigation "can cure deficiencies through later filings, regardless of when [they] filed the original 'action.'" *Id.* at 934. Despite recognizing that this Court in *Jones* rejected applying the PLRA's exhaustion requirements

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[8] It appears the Fourth Circuit would follow the Fifth, Sixth, Tenth, and Eleventh Circuits as well. *See Chase v. Peay*, 98 F.App'x 253 (4th Cir. 2004) (affirming *per curiam* the dismissal of claims for want of exhaustion where the former prisoner commenced suit while still in prison and the district court held that a prisoner's subsequent release from prison has no bearing on his obligation to exhaust administrative remedies).

action-wide instead of per claim, the Ninth Circuit nevertheless held that "[i]n PLRA cases, amended pleadings may supersede earlier pleadings," rending the original complaint "non-existent and, thus, its filing date irrelevant." *Id.* at 934. The Third Circuit widened this split by explicitly applying it to both amended and supplemental complaints.

The divergent paths taken by the Courts of Appeals are based upon a fundamental disagreement in how the PLRA should be applied. The Third Circuit's holding transforms the PLRA's mandatory exhaustion requirement from a prerequisite for suit into a moving target that needs only be hit before the district court dismisses the case. This is in direct conflict with the holdings of other Courts of Appeals and both the text and purpose of the PLRA. Only an answer from this Court will bring an end to these contradictory decisions and clarify whether released inmates can cure unexhausted claims in the midst of pending litigation. Review by this Court is necessary to resolve this split and clarify federal law. *See* Sup. Ct. R. 10(c).

III. Incentivizing Prisoners to Use the Prison Grievance Process is Critical to the Safe Administration of the Nation's Prisons.

This case presents issues of profound importance. "A prisoner who does not want to participate in the prison grievance system will have little incentive to comply with the system's procedural rules unless noncompliance carries a sanction[.]" *Woodford*, 548 U.S. at 94. Inmates within the Third Circuit used to have a clear incentive to participate in their prisons' grievance process—*i.e.*, ability to file suit. The Court of Appeals' holding eliminates that incentive for thousands of inmates.

Last year, 39% of inmates incarcerated in a Pennsylvania state prison were released, either on parole or after serving

their maximum sentence.[9] There is a good chance, therefore, that an inmate will be released during the pendency of his or her litigation, at which point he or she can now "cure" a failure to exhaust by filing an amended complaint. Further, of those inmates released last year, 38% served three or fewer years of incarceration. Because the statute of limitations for federal civil rights cases in Pennsylvania is two years,[10] those inmates are all but guaranteed to be released before the district court dismisses their case for want of exhaustion. Adjudicating exhaustion issues takes time—in this case, nearly two years. "To permit a prisoner to avoid the exhaustion requirement simply because the court cannot or does not rule on the prisoner's motion before he is released undermines the statute, circumventing the PLRA's commands through omission." *May*, 929 F.3d at 1233.

By creating an exception that excuses exhaustion for any inmate nearing release, the Court of Appeals removed the incentive for thousands of inmates to comply with the DOC's grievance process. This, in turn, makes it more difficult for prison officials to timely discover and correct problems within their institutions. An angry inmate presents obvious safety and security concerns. The DOC relies upon inmates using the grievance process to discover potential problems within its prisons, including employee misdeeds. Any investigation into alleged misconduct by prison employees may be fatally

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[9] This is consistent with past years. In 2018, 39% of inmates incarcerated in a state prison were released. In 2017, that number was 41%. *See* Monthly Population Reports, https://www.cor.pa.gov/About%20Us/Statistics/Pages/Monthly-Population-Reports.aspx (as visited Feb. 3, 2020); Annual Statistical Report for 2018, p. 28, tbl. 30, https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2018%20Annual%20Statistical%20Report.pdf (as visited Feb. 3, 2020).

[10] Claims brought pursuant to 42 U.S.C. § 1983 are subject to Pennsylvania's two-year statute of limitations applicable to personal injury actions. *Bougher v. Univ. of Pittsburgh*, 882 F.2d 74, 78–79 (3d Cir. 1989); *see also* 42 Pa. Cons. Stat. § 5524.

frustrated if officials only learn about the incident two-years after the fact when served with a complaint.

Requiring inmates to exhaust provides prison officials a "fair opportunity to correct their own errors," *Woodford*, 548 U.S. at 94, thereby "improv[ing] prison administration and satisfy[ing] the inmate" without the need for litigation, *Porter v. Nussle*, 534 U.S. 516, 525 (2002). The DOC's three-step grievance process ensures that inmate complaints are not ignored at the guard level, as fully appealed grievances are reviewed by DOC officials. The grievance process is used by the DOC to monitor inmate complaints across the Commonwealth and the Court of Appeals' new exception to the exhaustion requirement impairs this important penological tool.

Running a prison "is an inordinately difficult undertaking" in the best circumstances. *Turner v. Safley*, 482 U.S. 78, 84–85 (1987). Disincentivizing prisoners from grieving complaints only exacerbates that difficult undertaking. And pushing more unexhausted prisoner litigation into the federal courts will not provide better oversight of our nation's prisons. As this Court has repeatedly explained, "courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform." *Procunier v. Martinez*, 416 U.S. 396, 405 (1974) (overruled on other grounds by *Thornburgh v. Abbott*, 490 U.S. 401 (1989)); *see also Turner*, 482 U.S. at 84.[11] They are especially "ill suited to act as the front-line agencies for the consideration and resolution of the infinite variety of prisoner complaints." *Id*. at 405 n.9. That front-line should be staffed by prison officials, not judges.

The Court of Appeals' holding will also exacerbate the outsized share of prisoner filings in Pennsylvania's three

[11] And where, as here, "a state penal system is involved, federal courts have * * * additional reason to accord deference to the appropriate prison authorities." *Turner*, 482 U.S. at 85.

federal districts. In 2018, 9.6% of all civil cases commenced in the Eastern, Middle, and Western districts of Pennsylvania were filed by inmates against DOC officials and employees. *See* Administrative Office of the United States Courts, Statistical Tables for the Federal Judiciary - December 2018, tbl. C-3, https://www.uscourts.gov/statistics-reports/statistical-tables-federal-judiciary-december-2018 (as visited Jan. 23, 2020). That percentage rises to 10.5% with the inclusion of inmate claims against federal prisons within the Commonwealth. *Ibid*. Pennsylvania inmates continue to file large numbers of federal lawsuits. And the large majority of those suits continue to be meritless. *See*, *e.g.*, Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Approached 20*, Correctional Law Reporter, p. 84, tbl. 3 (Feb./Mar. 2017) (83.3% of inmate cases nationally were decided in favor of defendants on pre-trial motions).

The Court of Appeals' holding will have a detrimental impact on the States' ability to administer their prisons and timely address prisoner concerns. Review by this Court is necessary to reinstate an important penological tool relied upon by prison officials to maintain a safe environment within their institutions.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania

SEAN A. KIRKPATRICK
Senior Deputy Attorney General
Counsel of Record

HOWARD G. HOPKIRK
Senior Deputy Attorney General

DANIEL B. MULLEN
Deputy Attorney General

COUNSEL FOR PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
RESPONDENTS

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