No. 21-692

In the

Supreme Court of the United States

SGT. HAYSTINGS; JOHN E. WETZEL, SRC DOC; MIKE CLARK, SUPERINTENDENT ALBION,

Petitioners,

v.

ALBERT B. KORB,

Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Prison Litigation Reform Act ("PLRA") provides 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). This Court has described that provision as "boilerplate," and held that it does not displace "the usual procedural practice" beyond those departures explicitly set forth elsewhere in the PLRA. *Jones v. Bock*, 549 U.S. 199, 214, 216, 220 (2007). Meanwhile, Federal Rule of Civil Procedure 15(d) has long allowed for supplemental pleadings to "set[] out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented"—even if "the original pleading is defective in stating a claim or defense." In an analogous context, this Court has held that statutory language forbidding a plaintiff from "commenc[ing]" a lawsuit until "after any final decision" of an administrative agency does not preclude the plaintiff from curing a lack of pre-filing exhaustion through a supplemental complaint establishing post-filing exhaustion. *Mathews v. Diaz*, 426 U.S. 67, 75 (1976); 42 U.S.C. § 405(g).

The question presented is:

Whether prisoner-plaintiffs can file an amended or supplemental complaint to cure an initial filing defect under the PLRA's exhaustion provision.

PARTIES TO THE PROCEEDING

Petitioners are John Wetzel, Secretary of the Pennsylvania Department of Corrections, Mike Clark, Superintendent of the State Correctional Institution – Albion, and Sergeant Scott Haystings, a corrections officer at Albion.

Respondent is Albert B. Korb, an inmate at the State Correctional Institution – Albion.

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INTRODUCTION

The Third Circuit's unpublished decision does not warrant this Court's review. That decision faithfully applied this Court's precedents, and Petitioners' claimed circuit split is overblown. Contrary to Petitioners' repeated claims, the Third Circuit created no "exception" to the PLRA's exhaustion requirement. Instead, exhaustion is still required for *all* claims under the PLRA. Indeed, Respondent indisputably exhausted his claims before filing his supplemental complaint. And the Third Circuit correctly recognized that the PLRA's exhaustion requirement simply does not displace Federal Rule of Civil Procedure 15(d).

That holding faithfully follows this Court's decisions in both *Jones v. Bock*, 549 U.S. 199 (2007), and *Mathews v. Diaz*, 426 U.S. 67 (1976). In *Jones*, this Court held that the PLRA does not nullify the normal application of the Federal Rules absent clear statutory text to the contrary. 549 U.S. at 214, 220. And, in *Mathews*, this Court held that plaintiffs can cure their initial failure to exhaust, as required there by the Social Security Act, by filing a supplemental complaint. 426 U.S. at 75.[1] The Third Circuit's decision carefully and correctly applied this Court's holdings in *Jones* and *Mathews*.

Petitioners' concerns about the Third Circuit's decision thus ring hollow. Rule 15(d) explicitly allows for supplemental complaints even when the original

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[1] The text of the Social Security Act provides that individuals may "commence[]" their lawsuits only "*after* any final decision of the Commissioner." 42 U.S.C. § 405(g) (emphasis added). Despite that textual similarity to the PLRA, Petitioners inexplicably ignore *Mathews* in their petition. That omission can hardly be inadvertent: *Mathews* was briefed below and relied on by the Third Circuit. App. 6a n.5.

complaint is "defective." The Rule thus plainly allows for supplemental complaints to cure an initial filing defect. Although this Court has not directly addressed the interplay between Rule 15(d) and the PLRA, it has addressed the interplay between Rule 15(d) and materially similar text in the Social Security Act. *See Mathews*, 426 U.S. at 75. In that case, the Court held that a supplemental complaint can be employed to allege new facts that "cure[]" a lack of pre-suit exhaustion, thus directly rebutting Petitioners' legal arguments here. *See id.* at 75 & n.9; Pet. at 1.

Nor does the Third Circuit's decision deviate from the text of the PLRA. To the contrary, the Third Circuit's decision simply reads the PLRA against the bedrock Federal Rules of Civil Procedure—as this Court instructed in *Jones*, 549 U.S. at 220. And, again, the Third Circuit created no "exception" to the PLRA's exhaustion requirement. All prisoners are still required to exhaust. Consistent with *Jones*, they may do so pursuant to the Federal Rules of Civil Procedure—just like any other plaintiff.

Petitioners' claimed circuit conflict is vastly overstated. Far from the massive split described by Petitioners, there is—at best—disagreement between the Seventh and Third Circuits on this issue. But the Seventh Circuit's decision in *Chambers v. Sood*, 956 F.3d 979 (7th Cir. 2020), did not address this Court's key precedents or the legal reasoning in the decision below. On the contrary, the Seventh Circuit's decision does not even mention either *Jones* or *Mathews*, let alone engage with their principles. As for the rest of the decisions cited by Petitioners, most do not involve supplemental complaints or mention Rule 15(d) *at all*. The few others that do discuss Rule 15(d) predate this Court's decision in *Jones*, and thus did not have the

benefit of this Court's instruction to read the PLRA against the Federal Rules of Civil Procedure. At the very least, further percolation would allow the lower courts to fully examine the interplay of Rule 15(d) and the PLRA. Review now would be premature.

Because this Court's precedents foreclose their arguments, Petitioners ultimately resort to abstract policy arguments about the PLRA's supposed purpose. They claim that the Third Circuit's rule would somehow discourage plaintiffs from exhausting the prison grievance system, but that view is unfounded and inconsistent with this Court's prior rulings. Under the decision below, prisoners are *never* excused from exhausting their claims. They are simply allowed to use Rule 15's generally applicable provisions to supplement their complaints *after* exhaustion. This Court was explicit in *Jones* that "perceived policy concerns" cannot justify a "depart[ure] from the usual practice under the Federal Rules." 549 U.S. at 212. Yet, that is precisely what Petitioners' stance would accomplish. And this Court has been equally clear that supplemental pleadings can cure an exhaustion defect in an initial complaint. *See Mathews*, 426 U.S. at 75. That normal procedure resolves this case.

Moreover, this case is a poor vehicle for deciding this question. The decision below was unpublished and nonprecedential, thus binding no one beyond the confines of this case. Nor would this Court's review have any practical effect on this case. Petitioners agree that Respondent's complaint should have been dismissed without prejudice, which at a minimum would have allowed Respondent to refile his complaint. Pet. at 9 n.3. Thus, even under Petitioners'

proposed rule, the only practical difference would have been extra procedural hassle for everyone involved.

STATEMENT OF THE CASE

A. The Prison Litigation Reform Act

The PLRA states that "[n]o action shall be brought with respect to prison conditions . . . until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The touchstone for interpreting that provision is, as always, the statutory text. *Ross v. Blake*, 578 U.S. 632, 639-40 (2016). However, that principle "runs both ways" and "applies regardless of whether it benefits the inmate or the prison." *Id.* at 640 n.1. As with any statute, the statutory text is read against the backdrop of the Federal Rules of Civil Procedure. *See Jones*, 549 U.S. at 212. Any "departures" from those Federal Rules must be "specified by the PLRA itself." *Id.* at 214.

Elsewhere, the PLRA explicitly departs from the Federal Rules of Civil Procedure. For example, the PLRA requires courts to "review, before docketing" prisoner complaints—and then to *sua sponte* dismiss any complaint that is "frivolous, malicious, or fails to state a claim upon which relief may be granted" or otherwise sues a "defendant who is immune from [monetary] relief." 28 U.S.C. § 1915A; *id.* § 1915(e)(2). Those provisions plainly depart from the usual pleading requirements of Rule 8 and the usual motion practice of Rule 12. *See Jones*, 549 U.S. at 214-15. And in § 1997e—which provides for the PLRA's exhaustion requirement—the PLRA allows a defendant to "waive the right to reply" to any prisoner complaint without admitting the allegations against him, "[n]otwithstanding any other law or rule of procedure." 42 U.S.C. § 1997e(g). That provision also

"expressly" departs from the usual practice under Rule 8(b)(6). *Jones*, 549 U.S. at 216.[2]

But the PLRA's exhaustion requirement does not expressly depart from the usual procedures of the Federal Rules. *Id.* at 212. Thus, this Court has held that prisoners need not plead exhaustion in their complaint because Rule 8(a) simply requires "a short and plain statement of the claim" for relief. *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). Accordingly, the PLRA's exhaustion requirement is a non-jurisdictional affirmative defense, like many other exhaustion requirements. *See id.* (citing *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70, 75 (1998); *Day v. McDonough*, 547 U.S. 198, 208 (2006)). Likewise, the PLRA's exhaustion requirement, despite referring to an "action," does not require "the dismissal of an entire action if a single claim fails to meet the pertinent standards." *Id.* at 220. As this Court explained, the phrase "no action shall be brought" is "boilerplate." *Id.* Many other "instances in the Federal Code [contain] similar language," and thus the PLRA's exhaustion provision does not displace the normal practice of dismissing only unexhausted claims (instead of entire complaints). *Id.* at 220-21. And, in line with normal procedures, the courts have consistently dismissed unexhausted claims without prejudice. *See, e.g.*, *Booth v. Churner,* 532 U.S. 731, 735 (2001); *Bargher v. White*, 928 F.3d 439, 447 (5th Cir. 2019).

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[2] Congress has departed from the Federal Rules with equal clarity elsewhere in the Federal Code. *See, e.g.*, *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (citing 8 U.S.C. § 1252(e)(1)(B), which forbids class actions "under Rule 23 of the Federal Rules of Civil Procedure" for immigration proceedings).

At bottom, this Court has made clear that "courts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns." *Jones*, 549 U.S. at 212. Instead, an express textual instruction to depart from the Federal Rules is required. *Id.* And "silen[ce]" on an issue "is strong evidence that the usual practice should be followed." *Id.*

B. Federal Rule of Civil Procedure 15

Federal Rule of Civil Procedure 15 allows parties to file amended and supplemental pleadings. Like every other rule, it "should be construed, administered, and employed . . . to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Thus, Rule 15 sets forth a "liberal amendment policy," *Kontrick v. Ryan*, 540 U.S. 443, 459 (2004), helping to ensure that cases are decided "on their merits," 6 C. Wright & A. Miller, *Federal Practice and Procedure* § 1474 (3d ed. 2021), and without the unnecessary procedural inefficiency of requiring a plaintiff to refile a new action.

Rule 15(d) thus allows parties to file supplemental complaints with "any transaction, occurrence, or event that happened after" the initial complaint. Crucially, supplemental complaints are allowed "even though the original pleading is defective in stating a claim or defense." And the Advisory Committee sought to make this crystal clear by specifying that Rule 15(d) allows supplementation "despite the fact that the original pleading is defective." Fed. R. Civ. P. 15(d) 1963 advisory committee's note. Indeed, the Advisory Committee explained that Rule 15(d) is necessary because "plaintiffs have sometimes been needlessly remitted to the difficulties of commencing a new action even though events occurring after the

commencement of the original action have made clear the right to relief." *Id.*

This Court has made clear that "Rule 15(d) . . . plainly permits supplemental amendments to cover events happening after suit." *Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 227 (1964). "Such amendments are well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice," *id.*, and allow a plaintiff to "belatedly comply with the requirements for stating a claim for relief . . . by adding allegations that indicate a possible right to relief," 6A C. Wright & A. Miller, *Federal Practice and Procedure* § 1505 (3d ed. 2021). By allowing supplemental complaints, the courts "avoid[] needless sacrifice to defective pleading[s]." *Mathews*, 426 U.S. at 75 n.9. Supplemental complaints under Rule 15(d) thus allow plaintiffs to cure unsatisfied "jurisdictional condition[s]" with facts that arose only after the initial complaint. *Id.* at 75 & n.9.

C. Factual Background

On January 30, 2018, Respondent Albert Korb—a 77-year-old inmate in the special needs unit at the State Correctional Institution in Albion, Pennsylvania ("SCI-Albion")—was summoned to Petitioner Sergeant Haystings' office. App. 2a. Korb went willingly. *Id.* When he arrived, Haystings lectured him about the cleanliness of his cell. *Id.* Korb said he was aware of Haystings' concerns and turned to leave. *Id.* Haystings then physically assaulted Korb to prevent him from leaving. Korb alleged that Haystings "violently put his arms around [him]," "twisted [him] sideways," and ordered him to stay. *Id.* Korb, fearing that Haystings would injure him further, complied. *Id.*

Two days later, acting *pro se*, Korb filed a § 1983 complaint against Haystings in the Western District of Pennsylvania alleging that Haystings had violated his constitutional rights. *Id.* 2a-3a; *see also Korb v. Haystings*, No. 1-18-cv-00042 (W.D. Pa.) Docket Entry ("Dkt.") 1-1 at 1-4. Korb did not exhaust SCI-Albion's grievance system before filing his complaint. *See* 42 U.S.C. § 1997e(a). But he quickly realized his need to do so. On February 5, 2018—six days after the assault occurred and four days after he filed his complaint—Korb filed a prison grievance.[3] Dkt. 37-1 at 1. That same day, in the district court, he filed a motion for leave to file an amended complaint to add Petitioners John Wetzel (the Secretary of Corrections of Pennsylvania) and Mike Clark (at the time, the Superintendent at SCI-Albion) as defendants. Dkt. 2 at 1. In a letter attached to the motion, he wrote: "I'll keep [the court] posted—on [the] grievance process." *Id.*

The prison denied Korb's grievance a little less than two months later, on March 23, 2018. Dkt. 37-1 at 3. Korb appealed the decision that same day, and his appeal was denied by SCI-Albion's facility manager on April 18, 2018. Dkt. 43-2 at 1. Korb then made a final appeal to the Secretary of Corrections through the Office of Inmate Grievances and Appeals. That office upheld SCI-Albion's decisions, and Korb had fully exhausted his administrative remedies, on May 2, 2018. Dkt. 43-3 at 1.

On June 7, 2018, Korb filed an update informing the district court that he had "completed the 3 stages

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[3] Korb's grievance was timely under the Pennsylvania Inmate Grievance System's policy. *See Inmate Grievance System—DC-ADM 80* § 1(A)(8), Pa. Dep't of Corr. (May 1, 2015), *available at* https://bit.ly/3rk5BTJ.

of the grievance process." Dkt. 12 at 1. He attached copies of his grievance, the denial of his grievance, his first appeal, and the denial of his first appeal to that filing. Dkt. 12-1 at 1-4. Six days later, on June 13, 2018, the district court ordered the U.S. Marshal's office to serve Korb's complaint on the defendants. Dkt. 16. The U.S. Marshal's office did so about a week later. Dkt. 20. Thus, Korb had exhausted his administrative remedies before Petitioners were even aware of his complaint.

Petitioners then moved to dismiss Korb's complaint under Federal Rule of Civil Procedure 12(b)(6). Dkt. 34. As relevant here, they argued that the complaint must be dismissed in its entirety because Korb had failed to exhaust his administrative remedies before filing and therefore had "procedurally defaulted." *Id.* at 3. In response to that motion, Korb sent three more letters to the district court saying that he had exhausted his administrative remedies. First, he told the court that he had "real true physical evidence that I did indeed exhaust all 3 stages [that the] grievance system required." Dkt. 37 at 1. About a month later, he again wrote: "[Defendants] claim[] I procedurally defaulted by not exhausting my 3 stages of [the] Albion grievance system. This claim is not true." Dkt. 40 at 1. And a month after that, in November 2018, he again wrote to the court and attached "duplicates of the 3-step Albion grievance system I completed." Dkt. 43.[4]

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[4] Petitioners disingenuously assert that "Korb never filed a motion for leave to file a supplemental complaint," ignoring the substance of these letters and the fact that Korb was acting *pro se*. Pet. at 9. As discussed later, the Third Circuit correctly considered these letters as supplemental complaints under Rule 15(d). App. 7a. This Court has repeatedly held that "[a] document filed *pro se* is 'to be liberally construed.'" *See Erickson*

Nevertheless, on March 18, 2019, a magistrate judge granted Petitioners' motion to dismiss. App. 19a. In its decision, the court misstated the facts and misapplied the law. App. 14a n.2. It incorrectly said that Korb "has not completed the prescribed grievance procedure" even though Korb told the court four times that he had. *Id.* 17a-18a. Then, compounding this mistake, it stated that granting Korb leave to amend his complaint would be "futile" because Korb "has failed to exhaust his administrative remedies." *Id.* 18a-19a.[5] Last, it dismissed all of Korb's claims with prejudice, which all parties now agree was clearly erroneous.[6]

Korb filed objections to that decision, emphasizing that he had told the court repeatedly that he had exhausted his administrative remedies. Dkt. 56 at 2. Treating Korb's objections as a motion for reconsideration, the District Court summarily denied them. Dkt. 62. Korb timely appealed to the Third Circuit.

D. The Decision Below

The Third Circuit vacated the district court's order in an unpublished, nonprecedential opinion. App. 9a. It acknowledged that the language "[n]o action shall be brought," when viewed "in isolation," could support Petitioners' view. *Id.* 5a n.4. However, it explained

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v. Pardus, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

[5] Petitioners also moved to dismiss Petitioners Wetzel and Clark for failure to state a claim. As noted above, the magistrate judge dismissed Korb's claims against those Petitioners with prejudice based on a patently erroneous factual assumption.

[6] On subsequent appeal to the Third Circuit, everyone agreed that even if dismissal were proper, it should have been *without* prejudice. Pet. at 9 n.2.

that, because any complaint is necessarily "brought" under the Federal Rules, Rule 15(d) applies and "allow[s] a plaintiff to supplement his complaint to show exhaustion" post-filing. *Id.* A supplemental complaint, the Third Circuit reasoned, "may cure jurisdictional . . . and non-jurisdictional defects . . . such as the PLRA's affirmative defense of exhaustion." *Id.* 6a n.5 (citing *Mathews*, 426 U.S. at 75; *Jones*, 549 U.S. at 212). As such, the Third Circuit viewed Korb's supplemental complaint as if it "were included in the original complaint when it was 'brought.'" *Id.* 7a.[7]

For these principles, the court relied on *Jones*, *Mathews*, and the Third Circuit's recent decision in *Garrett v. Wexford Health*, 938 F.3d 69 (3d Cir. 2019), *cert. denied*, 140 S. Ct. 1611 (2020). As Petitioners mention, *Garrett* involved the separate question of whether the PLRA requires dismissal of a prisoner's claim if the prisoner filed his complaint while in prison but is then released from prison—and no longer subject to the PLRA's exhaustion provision—while his case is pending. 938 F.3d at 81; Pet. at 6. It held that the PLRA does not require dismissal because it does not override the Federal Rules, which allow supplemental complaints to allege post-filing facts that cure pleading defects. *Garrett*, 938 F.3d at 86.

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[7] Petitioners' suggestion that the Third Circuit just "hand-pick[ed] four" issues out of thin air is misleading. Pet. at 9. As directed by the Third Circuit, Korb filed a letter in support of his appeal, arguing that he had "mailed [the court] 4 times duplicates of my 3 stage-completion," before asking "how could they say I did not complete [the] required grievance process?" *Korb v. Haystings*, No. 19-2826 (3d Cir.) Docket Entry ("3d Cir. Dkt.") 26 at 4. Korb then sent the Third Circuit documentary evidence that he had exhausted. 3d Cir. Dkt. 30 at 4-10. Only then did the Third Circuit appoint pro bono counsel for Korb, directing counsel to address the issues that led to reversal. 3d Cir. Dkt. 34.

This Court denied certiorari in 2020. *See Garrett*, 140 S. Ct. 1611.

Turning to the facts in this case, the Third Circuit reasoned that, because "Korb sent letters to the District Court proving that he complied with Albion's grievance process after he had filed his complaint," he had adequately "set[] out an[] . . . occurrence[] or event that happened after the date of the pleading to be supplemented." App. 7a (quoting Fed. R. Civ. P. 15(d)). The Third Circuit held that the District Court should have treated Korb's letters as supplemental pleadings and "considered whether they demonstrated that Korb has exhausted his administrative remedies." *Id.* 7a-8a.[8] It vacated the order dismissing Korb's complaint and remanded the case to the District Court. *Id.* 9a. This petition followed.

REASONS FOR DENYING THE PETITION

The Third Circuit's unpublished decision was correct on the merits and does not warrant this Court's review. Faithfully applying this Court's precedents in both *Jones* and *Mathews*, the Third Circuit correctly held that the PLRA's exhaustion requirement does not displace the Federal Rules of Civil Procedure, and that Rule 15(d) allows for supplemental complaints to cure exhaustion-related defects. Nor is there any real circuit conflict that warrants this Court's review. At

[8] Both in this case and in *Garrett* the Third Circuit recognized the principle that a document filed *pro se* should be liberally construed. *See* App. 7a-8a; *Garrett*, 938 F.3d at 81 n.17; *Erickson*, 551 U.S. at 94. Despite Petitioners' complaints about that principle, they offer nothing to rebut it—beyond a facially inapt analogy to *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1581-82 (2020). Petitioners do not explain how construing a *pro se* pleading liberally is anything akin to *Sineneng-Smith*, where both sides were "represented by competent counsel" and had fully briefed their positions. *Id.* at 1578.

most, there is a shallow, 1-1 disagreement between the Third and Seventh Circuits. But the Seventh Circuit's decision does not mention either *Jones* or *Mathews*, let alone discuss their reasoning. And this case is a poor vehicle for resolving this issue. The decision below was unpublished, and Petitioners' position here would make no practical difference in this case. Even under Petitioners' proposed rule, Respondent could have simply re-filed his fully exhausted complaint. The PLRA does not require that unnecessary procedural inefficiency, and Rule 15(d) was designed to avoid it. At bottom, Petitioners' arguments are driven wholly by policy concerns, which are simply insufficient to displace the Federal Rules of Civil Procedure.

I. The Third Circuit Faithfully Applied The Federal Rules Of Civil Procedure, The PLRA's Text, And This Court's Precedents.

The Third Circuit correctly applied this Court's precedents to harmonize Rule 15(d) and the PLRA's exhaustion requirement. As the Third Circuit correctly recognized, *Jones* instructs that the PLRA's exhaustion requirement does not displace the Federal Rules of Civil Procedure. And *Mathews* held that Rule 15(d) allows plaintiffs to supplement their complaints to cure exhaustion defects. The Third Circuit therefore did not, as Petitioners repeatedly claim, create a "judge-made exception" to the PLRA's exhaustion requirement. Pet. at 18. Rather, the Third Circuit simply recognized, consistent with this Court's precedents, that Rule 15(d) applies to the PLRA like any other statute. Petitioners offer little to rebut that logic beyond policy concerns, which this Court has expressly held are insufficient to displace the Federal Rules of Civil Procedure. *Jones*, 549 U.S. at 212.

A. This Court's Precedents Make Clear that Rule 15(d) Applies to the PLRA and Allows Plaintiffs to Cure Exhaustion Defects.

The Third Circuit correctly applied Rule 15(d) to the PLRA's exhaustion requirement. To avoid that conclusion, Petitioners offer a crabbed reading of *Jones* that distorts its logic and context—while completely ignoring *Mathews* altogether. But, when viewed as a whole, the plain text of Rule 15(d) and the PLRA allows plaintiffs to cure exhaustion defects, as this Court instructed in both *Jones* and *Mathews*.

1. First, *Jones* plainly instructs that the PLRA's exhaustion provision does not displace the Federal Rules of Civil Procedure. In *Jones*, this Court unanimously rejected several judicially crafted procedural rules that lower courts had "designed to implement [the PLRA's] exhaustion requirement." 549 U.S. at 202-03. For example, the Court rejected one judicially created rule that required prisoners to plead exhaustion in their complaints. *Id.* at 211-12. The Court explained that such a rule was flatly inconsistent with Rule 8(a), which requires plaintiffs to plead only a "short and plain statement of the claim." *Id.* at 212. And the Court rejected a "total exhaustion" rule that required courts to dismiss an entire complaint if even one claim was unexhausted. *Id.* at 209, 219-24. Again, the Court explained that such a rule was a stark departure from the normal practice of proceeding on a claim-by-claim basis, and that nothing in the PLRA—nor the PLRA's reference to an "action"—warranted that departure from the normal procedural practice. *Id.* at 220-21.

Crucially, the Court explained that nothing in the PLRA's exhaustion provision warrants a departure from normal procedural rules. *Id.* at 212-14, 220. On

the contrary, the Court viewed the "statutory phrasing—'no action shall be brought'—[as] boilerplate language," found in "many [other] instances in the Federal Code." *Id.* at 220. Moreover, the "PLRA itself is not a source for prisoners' claims"; instead, prisoners must bring claims under another statute, such as 42 U.S.C. § 1983. *Id.* at 212. Thus, those claims receive the same treatment as any other claim brought under the Federal Rules of Civil Procedure, absent a clear textual statement to the contrary. *Id.*

There is no such clear textual statement here. In fact, the statute's structure and context confirm that Congress did *not* displace Rule 15(d)'s normal operation here. Unlike the PLRA's exhaustion provision, other provisions in the PLRA *do* explicitly depart from the Federal Rules. For example, § 1997e(g)(1) allows a defendant to waive his right to reply without admitting the allegations contained in the complaint "[n]otwithstanding any other law or rule of procedure." 42 U.S.C. § 1997e(g)(1). That clear textual departure is in the very same section as the PLRA's exhaustion requirement. It thus shows that, when Congress wanted to override the Federal Rules in the PLRA, it knew how to do so. *Jones*, 549 U.S. at 216. Its failure to do so for the PLRA's exhaustion requirement is clear textual evidence that the normal rules apply—including Rule 15(d). *Id.*; *cf. Leatherman v. Tarrant Cty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 168 (1993). *Expressio unius est exclusio alterius*.

To rebut that conclusion, Petitioners offer an overly crabbed reading of *Jones* that distorts its logic and reasoning. For example, Petitioners insist that *Jones* is limited to the term "action" in § 1997e(a), or

that *Jones* can be read only in the context of the "total exhaustion" rule at issue there. Pet. at 20-22. But *Jones* was quite clear that prisoners' claims are "brought" under statutes like § 1983, and thus are subject to "the usual practice under the Federal Rules." 549 U.S. at 212-13. Moreover, this Court's description of the PLRA's exhaustion requirement as "boilerplate" plainly meant that many other provisions in the Federal Code contain "similar language," but that such language does not displace normal procedures. *Id.* at 220-21. Also, *Jones* carefully explained that when Congress wished to depart from the Federal Rules, it knew how to do so—and that the PLRA's exhaustion requirement simply does not so "expressly" depart from the Federal Rules of Civil Procedure. *Id.* at 216-17.

Rule 15(d) thus clearly applies to the PLRA's exhaustion requirement. And Rule 15(d) is not, as Petitioners repeatedly assert, a "court-made rule." Pet. at 21. It is an important and longstanding provision in the Federal Rules, which allows prisoners to supplement their complaints just like other plaintiffs.

2. More specifically, Rule 15(d) allows prisoners to supplement their complaints to cure exhaustion defects. Petitioners oddly assert that Rule 15(d) is irrelevant here, straining to argue that a supplemental complaint cannot cure an exhaustion defect. But Petitioners' argument ignores the express language of Rule 15(d) and this Court's decision in *Mathews*—both of which make clear that supplemental complaints can cure exhaustion defects.

The plain language of Rule 15(d) allows plaintiffs to file supplemental pleadings "even though the original pleading is defective in stating a claim or

defense." As explained by the Advisory Committee notes, Rule 15(d) was designed to prevent plaintiffs from being "needlessly remitted to the difficulties of commencing a new action even though events occurring after the commencement of the original action have made clear the right to relief." Fed. R. Civ. P. 15(d) 1963 advisory committee's note. Petitioners wrongly seek to impose those unnecessary "difficulties" here. They agree that, at a minimum, the District Court was wrong to dismiss Respondent's claims with prejudice. Thus, under their view, Respondent should have been "needlessly remitted" to filing a new complaint "even though events occurring after" his initial complaint "have made clear [his] right to relief." *See id.*

Indeed, Rule 15(d) was amended in 1963 precisely to avoid the situation that Petitioners desire. Before the amendment, some courts had held that plaintiffs could not use Rule 15(d) to cure filing defects because "facts constituting a cause of action must exist at the time suit is commenced." *Bowles v. Senderowitz*, 65 F. Supp. 548, 552 (E.D. Pa. 1946); *see also Bonner v. Elizabeth Arden, Inc.*, 177 F.2d 703, 705 (2d Cir. 1949). Other courts held the opposite. *See Camilla Cotton Oil Co. v. Spencer Kellogg & Sons, Inc.*, 257 F.2d 162, 167-68 (5th Cir. 1958); *United States v. Reiten*, 313 F.2d 673, 674-75 (9th Cir. 1963). The Advisory Committee explicitly criticized decisions like *Bowles* and *Bonner* when amending Rule 15(d), explaining that the amendment was meant to reject those decisions and ensure that a plaintiff could file a "supplemental pleading despite the fact that the original pleading is defective." Fed. R. Civ. P. 15(d) 1963 advisory committee's note; *see also* 6A C. Wright & A. Miller, *Federal Practice and Procedure* § 1505.

Initial exhaustion defects are no exception, as this Court made clear in *Mathews*, 426 U.S. at 75. There, the Court was faced with a statute that allowed plaintiffs to "commence[]" a lawsuit only "after" exhausting the Social Security Administration's administrative review process. *Id.*; 42 U.S.C. § 405(g). As the Court explained, that statutory precondition was a "nonwaivable condition of jurisdiction." *Mathews*, 426 U.S. at 75. And the plaintiff in *Mathews* had not yet started the exhaustion process before commencing the lawsuit at issue. *Id.* at 74-75. Yet, the Court had "little difficulty" holding that "[a] supplemental complaint in the District Court would have eliminated this jurisdictional issue." *Id.* at 75. By the time the Court reached its decision, the plaintiff had fully exhausted and thus "it was not too late . . . to supplement the complaint to allege this fact." *Id.*

The same is true here. This Court's decision in *Mathews* establishes that Rule 15(d) allows for supplemental complaints to cure exhaustion defects. The statutory text at issue in *Mathews* is materially indistinguishable from the PLRA's exhaustion provision: The former forbids a plaintiff from "commenc[ing]" an "action" until "after" the plaintiff exhausts and receives a "final decision of the Commissioner of Social Security." 42 U.S.C. § 405(g). The latter provides that "no action shall be brought . . . until" exhaustion is complete. *Id.* § 1997e(a). Petitioners concede that to "commence" a lawsuit is to "bring" it. Pet. at 16 (quoting *Goldenberg v. Murphy*, 108 U.S. 162, 163 (1883)). And, if anything, the result is clearer here because the statute in *Mathews* was a "nonwaivable condition of jurisdiction," 426 U.S. at 75, while the PLRA's exhaustion requirement is a non-jurisdictional affirmative defense, *Jones*, 549 U.S. at

216-17. Because a Rule 15(d) supplemental complaint could cure the jurisdictional exhaustion defect in *Mathews*, the same must be true here.

Although *Mathews* was briefed below and relied on by the Third Circuit, *see* App. 6a n.5, Petitioners inexplicably do not even mention it in their petition. Instead, they cite *McNeil v. United States*, 508 U.S. 106, 113 (1993), which does not mention or apply Rule 15(d). Pet. at 17. Nor did the lower courts in *McNeil* mention *Mathews*, Rule 15(d), or supplemental complaints.[9] *McNeil* is thus simply inapposite. And, after *McNeil*, the Courts of Appeal have continued to rely on *Mathews* to apply Rule 15(d) to cure various pleading defects.[10]

Alternatively, Petitioners rely on the Eleventh Circuit's decision in *Harris v. Garner*, 216 F.3d 970 (11th Cir. 2000) (en banc), to argue that Rule 15(d) cannot cure exhaustion defects. But that argument completely ignores *Mathews*, which held that Rule

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[9] *See McNeil v. United States*, 964 F.2d 647, 647 (7th Cir. 1992); *McNeil v. U.S. Pub. Health Serv.*, No. 89 C 1822, 1991 WL 9994, at *1 (N.D. Ill. Jan. 24, 1991).

[10] *See, e.g.*, *T Mobile Ne. LLC v. City of Wilmington, Delaware*, 913 F.3d 311, 330-31 (3d Cir. 2019) (allowing a Rule 15(d) pleading to cure a nonjurisdictional defect); *Scahill v. D.C.*, 909 F.3d 1177, 1183-84 (D.C. Cir. 2018) (curing a jurisdictional defect); *Northstar Fin. Advisors Inc. v. Schwab Invs.*, 779 F.3d 1036, 1044 (9th Cir. 2015) (same); *U.S. ex rel. Gadbois v. PharMerica Corp.*, 809 F.3d 1, 5 (1st Cir. 2015) (same); *Feldman v. L. Enf't Assocs. Corp.*, 752 F.3d 339, 347-48 (4th Cir. 2014) (same, and noting that "the filing of a supplemental pleading is an appropriate mechanism for curing numerous possible defects in a complaint"); *Prasco, LLC v. Medicis Pharm. Corp.*, 537 F.3d 1329, 1337 (Fed. Cir. 2008) ("Rule 15(d) expressly allows for supplemental complaints to 'cure' defects in the initial complaint."); *see also Wilson v. Westinghouse Elec. Corp.*, 838 F.2d 286, 290 (8th Cir. 1988) (same, pre-*McNeil*).

15(d) *can* cure exhaustion defects like those present here. And *Harris* was ultimately driven by a purposive interpretation of the PLRA—which is impermissible under *Jones*—rather than either the plain text of Rule 15(d) or this Court's holding in *Mathews*. *See id.* at 983.[11] Petitioners have no response to that doctrinal logic.

3. Instead, Petitioners fall back on the repeated assertion that the Third Circuit created an "exception" to the PLRA's exhaustion requirement. Pet. at 14-15. But, again, the Third Circuit did not create any "exception" to the PLRA. It still requires all prisoners to exhaust, subject to both the PLRA and Rule 15(d). And the cases that Petitioners cite on this point are wholly inapposite.

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[11] Below, Petitioners asserted that *Mathews* was distinguishable as involving a jurisdictional condition and thus a "pleading requirement." Apparently recognizing the weakness of that argument, Petitioners have waived it here. *See Buck v. Davis*, 137 S. Ct. 759, 780 (2017). In any event, that distinction is without difference; jurisdictional conditions inherently prevent courts from deciding a case, whereas affirmative defenses must be asserted by a defendant. *See, e.g.*, *McDonough*, 547 U.S. at 205. And although the Eleventh Circuit distinguished *Mathews* in its *Harris* decision, it did so on purely purposive grounds, asserting that Rule 15(d) allows for supplemental complaints only when they are "used to further the statutory purpose involved." *Harris*, 216 F.3d at 983. That purposive distinction has no place in the Federal Rules or the Federal Code. *See, e.g.*, *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009); *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 261 (1993) ("[V]ague notions of a statute's 'basic purpose' are . . . inadequate to overcome the words of its text regarding the specific issue under consideration."). And *Jones* squarely rejected that sort of reasoning in the PLRA context.

Again and again, Petitioners cite cases where prisoners had *never* exhausted and yet brought lawsuits anyway. In each one of those cases, this Court rejected attempts by the lower courts to fashion exceptions to the PLRA out of whole cloth. For example, *Ross v. Blake*, 587 U.S. 632, 635 (2016), rejected a "special circumstances" exception to the PLRA. Likewise, *Porter v. Nussle*, 534 U.S. 516, 520-21 (2002), rejected a judicially crafted "excessive force" exception to the PLRA. And *Woodford v. Ngo*, 548 U.S. 81, 93 (2006), and *Booth v. Churner*, 532 U.S. 731, 735 (2001), required that the prisoner *fully complete* the exhaustion process. Those cases are nothing like the Third Circuit's decision, which did *not* excuse Respondent from exhausting his claims but instead allowed him to file a supplemental complaint (as permitted under Rule 15) once he had fully exhausted (as required under the PLRA).

B. Petitioners' Policy Arguments Are Misguided and Irrelevant.

At bottom, Petitioners' arguments are driven not by the text of the PLRA or Rule 15(d), but by bald policy arguments. But *Jones* emphatically held that policy arguments about the PLRA's purpose cannot override the normal functioning of the Federal Rules. Repeatedly, Petitioners extol the purpose of the PLRA's exhaustion provision, and (inaccurately) complain that the Third Circuit's decision is a return to the discretionary exhaustion regime of the PLRA's predecessor. Pet. at 25-26. But, once again, these policy concerns are illusory: The Third Circuit's decision requires exhaustion for each and every prisoner. Rather than undermining the PLRA's exhaustion requirement, the decision below

harmonizes that requirement with the procedural rules provided by Rule 15(d).[12]

In the end, all the decision below does is prevent the pointless dismissal of cases that can be refiled the same day they are dismissed. The Third Circuit's ruling thus avoids precisely the same procedural inefficiencies that Rule 15(d) was designed to prevent: the needless remittance and "difficulties of commencing a new action even though events occurring after the commencement of the original action have made clear the right to relief." Fed. R. Civ. P. 15(d) 1963 advisory committee's note. Petitioners offer nothing to explain how their claimed policy goals—which are not found in the PLRA's statutory text—can trump the plain terms of Rule 15.

Nor is it the judiciary's job to weigh those competing policy goals. As this Court has made clear time and again, its duty is to harmonize the text of statutes and the Federal Rules—not to determine which policies are best. *See Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461-62 (2002). Indeed, Petitioners are asking the Court to do what it explicitly declined to do in *Jones*. *See* 549 U.S. at 212. There, as here, "perceived policy concerns" were simply insufficient to "depart from the usual practice under the Federal Rules." *Id.* Congress knows how to displace the

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[12] Petitioners also argue that the decision below is inconsistent with the Third Circuit's earlier decision in *Pearson v. Sec'y Dep't Corr.*, 775 F.3d 598 (3d Cir. 2015). However, *Pearson* held that the PLRA's exhaustion requirement (which is still mandatory under the decision below) tolls the PLRA's statute of limitations. *Id.* at 603-04. It did not remotely address the question presented here and it is not inconsistent with the Third Circuit's holding in this case. Regardless, even if the decision below were somehow in tension with *Pearson*, that is for the Third Circuit, not this Court, to resolve.

Federal Rules when it wants to. And it did not do so here. *See id.*; 42 U.S.C. § 1997e(g). Thus, Petitioners' policy arguments are not only irrelevant. Under *Jones*, they are squarely foreclosed.

II. Petitioners' Claimed Circuit Split Is Shallow And Overblown.

The unpublished decision below does not create a circuit split that warrants this Court's review. At best, Petitioners have identified a disagreement solely between the Seventh and Third Circuits on the issue here. But the Seventh Circuit's decision does not even confront this Court's decisions in *Jones* and *Mathews*, while the decision below is not precedential. And the remaining cases that Petitioners cite either do not address supplemental complaints under Rule 15(d) or predate this Court's decision in *Jones*. Thus, if anything, Petitioners' analysis only confirms that the prudent course is to allow this issue to percolate, rather than stepping in now before there is a real circuit conflict to resolve.

1. Petitioners heavily rely on a number of cases decided before *Jones*. But none of those can establish a circuit split on how this issue should be resolved in light of this Court's current precedents.

For example, Petitioners repeatedly cite the Eleventh Circuit's decision in *Harris v. Garner*, 216 F.3d 970 (11th Cir. 2000) (en banc). But the Eleventh Circuit's ruling did not have the benefit of this Court's decision in *Jones*, which came many years later. Moreover, *Harris* dealt with § 1997e(e),[13] an entirely

[13] Section 1997e(e) does not involve exhaustion. It limits a prisoner's ability to bring certain claims while "confined in a jail, prison, or other correctional facility" unless the prisoner makes

different provision of the PLRA, and a *former* prisoner-plaintiff. 216 F.3d at 981-82. Although the Eleventh Circuit held that § 1997e(e) did not allow a former prisoner to use Rule 15(d), it did so chiefly to further "the purpose behind the statutory requirement" of the PLRA. *Id.* at 983; *see also id.* at 999 n.13 (Tjoflat, J., concurring in part and dissenting in part) (accusing the majority of getting "carried away by considerations of policy"). That is precisely the sort of purposive reasoning this Court rejected in *Jones*, when it cautioned that "courts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns." 549 U.S. at 212. The Eleventh Circuit has not yet revisited *Harris*'s flawed reasoning after *Jones*. It has only mechanically applied *Harris* (without mentioning *Jones*) in an unpublished, nonprecedential decision—which Petitioners also rely upon—where it was "unclear" whether the plaintiff had even sought to amend or supplement his complaint under Rule 15. *See Smith v. Terry*, 491 F. App'x 81, 83 (11th Cir. 2012).[14]

Similarly, Petitioners rely on the Sixth Circuit's decision in *Cox v. Mayer*, 332 F.3d 422 (6th Cir. 2003). *Cox* also pre-dated *Jones*. And, like *Harris*, it involved

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"a prior showing of physical injury or the commission of a sexual act."

[14] Indeed, post-*Jones*, the law is not as settled in the Eleventh Circuit as petitioners suggest. At least one district court has limited *Harris* to its facts and explained that "*Harris* does not hold that the PLRA's exhaustion requirement precludes supplemental claims under Rule 15(d)." *Hamlet v. Hoxie*, No. 18-CV-14167, 2021 WL 2384516, at *5 (S.D. Fla. Apr. 27, 2021) (allowing a prisoner to add a claim via Rule 15(d) that had not been exhausted when his suit was originally filed), *appeal filed*, No. 21-11937 (11th Cir.).

a different issue: whether the PLRA's exhaustion provision still applied after a prisoner was released from prison, even though the prisoner had never exhausted his administrative remedies. *See id.* at 424, 425 n.10. The prisoner in *Cox* waived any Rule 15(d) argument, so the Sixth Circuit's holding was not based on Rule 15(d). *Id.* at 428. Thus, the court spent only a sentence of *dicta* addressing the interaction between the PLRA and Rule 15(d), in which it cited the Eleventh Circuit's decision in *Harris* without any analysis. *Id.* at 428.

Again like *Harris*, *Cox*'s validity post-*Jones* is questionable at best. Indeed, the Sixth Circuit has since explained that *Jones* "lend[s] support to the idea that the ordinary operation of Rule 15(d) should be allowed" and clarified that "[t]he *Cox* panel's dicta" concerning Rule 15(d) "do not bind us." *Mattox v. Edelman*, 851 F.3d 583, 593 (6th Cir. 2017). The Sixth Circuit's law (like the Eleventh Circuit's) is therefore, at best, unsettled on the issue presented here.[15]

The Eighth Circuit is of the same set. Petitioners' only case there, *Johnson v. Jones*, 340 F.3d 624 (8th Cir. 2003), was also pre-*Jones* and is even more off-point. It did not address the interplay between Rule 15 and the PLRA at all. It never mentioned Rule 15, supplemental complaints, or amended complaints.

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[15] In other cases, the Sixth Circuit has recognized the impact *Jones* had on its past PLRA cases involving Rule 15. In *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013), it overruled its decision in *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997), because it was "flatly inconsistent with *Jones*." 716 F.3d at 951. *McGore* had held that the PLRA's screening requirement overrode Rule 15(a), and *LaFountain* held that, because of Rule 15(a), "a district court can allow a plaintiff to amend his complaint even when the complaint is subject to dismissal under the PLRA." *Id.*

And the Eighth Circuit has not yet reconsidered *Johnson* after *Jones*.

2. Meanwhile, almost all of Petitioners' post-*Jones* cases do not address the question presented here. In the Fifth Circuit, Petitioners cite three cases that do not mention Rule 15 or supplemental complaints, let alone discuss the interaction between Rule 15 and the PLRA. *See Williams v. Henagan*, 595 F.3d 610, 618 (5th Cir. 2010); *Bargher*, 928 F.3d at 446; *Gonzalez v. Seal*, 702 F.3d 785 (5th Cir. 2012). In two of those cases, the prisoners had never exhausted their administrative remedies. *See Williams*, 595 F.3d at 618; *Bargher*, 928 F.3d at 446. The third focuses entirely on whether the courts can excuse exhaustion altogether, with no discussion of supplemental complaints or Rule 15. *See Gonzalez*, 702 F.3d at 788. Taken together, these cases merely establish that the Fifth Circuit has not reached the issue here.

Neither has the Tenth Circuit. There, Petitioners cite *May v. Segovia*, 929 F.3d 1223 (10th Cir. 2019), which also involved a prisoner who filed a claim after being released from prison, but who had tendered the complaint before being released. *Id.* at 1226-27. But the plaintiff had never exhausted his administrative remedies and the court explicitly said that Rule 15(d) was not at issue. S*ee id.* at 1232. As a result, the court focused instead on the fact that the plaintiff had "brought" his claims when he *tendered* the complaint (while still confined), rather than when it was filed. *Id.* at 1232-33. *May* is thus simply inapposite. It did not address the circumstances presented here.[16]

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[16] In a case with circumstances closer to Respondent's, at least one district court in the Tenth Circuit has allowed prisoners who exhausted their administrative remedies after filing their complaints to proceed without dismissal, even after the Tenth

Finally, the Ninth Circuit case cited by Petitioners, *Jackson v. Fong*, 870 F.3d 928 (9th Cir. 2017), also dealt with a former prisoner who had never exhausted his administrative remedies. *Id.* at 933. The court held that "[a] plaintiff who was a prisoner at the time of filing his suit but was not a prisoner at the time of his operative complaint is not subject to a PLRA exhaustion defense." *Id.* at 937. *Jackson* thus decided a different issue and could not possibly establish a circuit split on the question here.

3. Stripped of these distractions, Petitioners have identified only one relevant decision that disagrees with the outcome in this case. *See Chambers*, 956 F.3d at 979. In *Chambers*, the Seventh Circuit rejected a prisoner's argument that his post-filing exhaustion could cure his initial filing defect. *See id.* at 984. But the Seventh Circuit's decision is bereft of reasoning or analysis and supports its conclusion by citing only a single case, the Seventh Circuit's pre-*Jones* decision in *Ford v. Johnson*, 362 F.3d 395, 398-400 (7th Cir. 2004). In fact, *Chambers* does not discuss *Jones* at all. Nor does it discuss *Mathews* or the text of Rule 15(d). It does not even mention Rule 15. And the Seventh Circuit's sparse reasoning is unsurprising given that the parties did not brief Rule 15 or *Mathews*, and the prisoner did not argue that the Seventh Circuit should revisit its past decisions after *Jones*. Rather than expend this Court's resources to resolve a potential disagreement between an unreasoned Seventh Circuit case and an unpublished Third Circuit case, the more prudent course is to allow the issue to percolate further in the lower courts.

Circuit's decision in *May*. *See Rogers v. Colorado Dep't of Corr.*, No. 16-CV-02733-STV, 2019 WL 4464036, at *11 (D. Colo. Sept. 18, 2019).

III. This Case Is A Poor Vehicle For Deciding The Question Presented.

Certiorari should also be denied because this case is a particularly poor vehicle to address the issue. The decision below is an unpublished, nonprecedential opinion that does not bind future Third Circuit panels or the district courts within that Circuit. *See* App. 2a (noting that the disposition "is not an opinion of the full court and . . . does not constitute binding precedent"). It thus is incapable of creating an actual circuit split because the Third Circuit is free to disregard it in the future.

Additionally, with the limited exception of the Third Circuit's decision here and the Seventh Circuit's decision in *Chambers*, Petitioners have identified no other circuits that have addressed the PLRA's interaction with the Federal Rules since this Court denied certiorari on a similar but distinct issue in *Garrett*. *See* 140 S. Ct. 1611 (2020). This Court should allow the lower courts to develop the relationship between the PLRA and the Federal Rules further, especially because—as discussed above—this issue was not even briefed in *Chambers* and barely addressed in the Seventh Circuit's opinion. There is no reason to grant certiorari now from the unpublished decision below.

Finally, even under Petitioners' theory, a ruling in their favor here would have no meaningful practical consequence—other than the procedural inefficiency of requiring Respondent to refile his complaint. Petitioners agree that Respondent's complaint should not have been dismissed with prejudice. *See* Pet. at 9 n.3. Because Korb had already exhausted his administrative remedies, under Petitioners' theory he could have simply refiled his complaint the same day

it was dismissed, proceeded with his claims in a new action, and avoided the issue here.[17] The only substantive difference for this case would have been the increased procedural burdens on everyone involved from the docketing of an entirely new lawsuit. But that is exactly the unnecessary procedural detour that Rule 15(d) is meant to avoid, and it only underscores the lack of any need for this Court's review here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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[17] Respondent did not take that route here because the District Court prevented him from filing a new action by erroneously dismissing his complaint with prejudice. *See* App. 19a. He was thus forced to appeal to the Third Circuit to correct that error. *See* App. 5a. Though the statute of limitations had expired by the time of Korb's appeal, he surely was entitled to equitable tolling given that his lawsuit had been erroneously dismissed with prejudice. *Munchinski v. Wilson*, 694 F.3d 308, 330 (3d Cir. 2012) (holding that equitable tolling is appropriate when "a court erroneously dismissed pending petitions"). Below, Respondent argued for equitable tolling in the alternative, but because the Third Circuit correctly allowed his case to proceed, it did not reach the issue. 3d Cir. Dkt. 45 at 37 & n.11.