No. 25-

IN THE

Supreme Court of the United States

CHARLES BROOKS, IN HIS INDIVIDUAL CAPACITY;
CHERYL PIEPHO, IN HER INDIVIDUAL CAPACITY

Petitioners,

v.

JEREMY JAMES ALLEN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Prison Litigation Reform Act (PLRA) requires incarcerated persons to exhaust grievances using the prison's grievance process before suing. 42 U.S.C. § 1997e(a). Consistent with this mandatory exhaustion rule, courts in the Fifth, Sixth, Seventh, Tenth, and Eleventh Circuits hold that former inmates who are released while their lawsuit is pending may not amend their pleadings to add unexhausted claims. Courts in the Third, Ninth, and now the Eighth Circuit, on the other hand, have decided that such claims are not subject to exhaustion, effectively creating an end-run around mandatory exhaustion. The question presented here is:

When a formerly incarcerated person amends a complaint filed while he was in prison and adds unexhausted claims, does the PLRA require dismissal of those claims?

PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the Court whose judgment is sought to be reviewed are Plaintiff-Respondent Jeremy Allen, a former inmate at the Minnesota Correctional Facility-Faribault; Defendant-Petitioner Charles Brooks, a nurse with the Minnesota Department of Corrections; and Defendant-Petitioner Cheryl Piepho, a former scheduling clerk with the Minnesota Department of Corrections. There are no publicly held corporations involved in this proceeding.

RELATED PROCEEDINGS

- *Allen v. Piepho*, Case No. 21-cv-02689 (SRN/SGE), U.S. District Court, District of Minnesota. Interlocutory appeal certified November 17, 2023.

- *Allen v. Amsterdam*, No. 23-3658, U.S. Court of Appeals for the Eighth Circuit. Judgement entered March 26, 2025. Petition for rehearing en banc denied May 22, 2025.

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JURISDICTION

This Court has jurisdiction to review the Eighth Circuit's decision on writ of certiorari under 28 U.S.C. § 1254(1). The petition is timely filed per the Court's August 19, 2025 order extending the time to file the petition by 30 days, up to and including September 19, 2025.

STATUTORY PROVISIONS INVOLVED

The Prison Litigation Reform Act (PLRA) states that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, 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).

INTRODUCTION

Nearly thirty years ago, in response to a growing wave of litigation by incarcerated people, Congress enacted the PLRA, the centerpiece of which was a requirement that such claims be first addressed within the correctional facility itself. The PLRA's exhaustion rule has succeeded in allowing prisoner complaints to be remedied internally, while still providing an avenue for relief for claims that cannot be resolved through internal grievance processes. This case is about whether Congress' choice can be subverted when a formerly incarcerated person amends his complaint post-release.

This issue has divided the circuits, with a majority deciding that the exhaustion rule depends on the plaintiff's custody status at the time the lawsuit is "brought." Three circuits, however, including the court below, have decided that unexhausted claims may be added after an inmate has been released. In these circuits, this has made the exhaustion rule subject to gamesmanship and manipulation. This case presents this Court with a clean vehicle to resolve this split and ensure that exhaustion operates uniformly nationwide, as Congress intended.

STATEMENT OF THE CASE

I. The PLRA's Mandatory Exhaustion Rule.

Congress passed the Prison Litigation Reform Act with the "purpose [of providing] an effective case management plan for prisoner civil rights cases." Bernard D. Reams & William H. Manz, *A Legislative History of the Prison Litigation Reform Act of 1996*, Pub. L. No. 104-134,

110 Stat. 1321, at iii (1997). Congress designed the PLRA "to filter out the bad claims and facilitate consideration of the good," so that "the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit." *Jones v. Bock*, 549 U.S. 199, 203-4 (2007). Prison condition and prison civil rights case filings increased from 25,992 in 1990 to 41,679 in 1995, an increase of 60 percent. *See* Administrative Office of the United States Courts, Judicial Facts and Figures, Tables 4.4, 4.6.[1] Filings dropped almost immediately in the wake of the PLRA, though such cases continue to "account for an outsized share of filings" in federal district courts. *Jones*, 549 U.S. at 203 (quoting *Woodford v. Ngo*, 548 U.S. 81, 94 n. 4 (2006), and analyzing 2005 data). The most recent figures show 30,273 prison condition and prison civil rights filings in fiscal 2023, a number that has continued to rise after plateauing in the mid-2000s. Judicial Facts and Figures, Table 4.6.

This Court has described mandatory exhaustion as the "centerpiece" of the PLRA. *Perttu v. Richards*, 605 U.S. 460, 465 (2025); *Woodford*, 548 U.S. at 84. The exhaustion rule provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, 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). "Congress invigorated the exhaustion prescription" in passing the PLRA, replacing a former statute that made exhaustion largely discretionary.

1. Available at https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-facts-and-figures/judicial-facts-and-figures-2023 (last visited September 18, 2025).

Porter v. Nussle, 534 U.S. 516, 524 (2002). Exhaustion is a "prerequisite to suit." *Id.* As long as a grievance process is available to the inmate, "the PLRA's text suggests no limits on an inmate's obligation to exhaust." *Ross v. Blake*, 578 U.S. 632, 639 (2016).

This Court's case law on PLRA exhaustion has consistently emphasized the strict and mandatory nature of the exhaustion rule as necessary to accomplish Congress' goals. In the first such case, a unanimous Court emphasized that exhaustion is mandatory even where the grievance process does not afford the remedy an inmate seeks, finding it "highly implausible that [Congress] meant to give prisoners a strong inducement to skip the administrative process simply by limiting prayers for relief to money damages not offered through administrative grievance mechanisms." *Booth v. Churner*, 532 U.S. 731, 740-41 (2001). The next term, in *Porter*, a unanimous Court held that exhaustion was mandatory whether the lawsuit was about prison conditions generally or about a specific incident because it was unlikely that Congress "meant to leave the need to exhaust to the pleader's option." 534 U.S. at 530. More recently, in *Ross*, the Court said there is no "special circumstances" exception to exhaustion, emphasizing that statutory exhaustion requirements reflect Congress' careful judgment about when the courts should be available to provide relief. 578 U.S. at 640. "Time and again, this Court has taken such statutes at face value—refusing to add unwritten limits onto their rigorous textual requirements." *Id.*

There are good reasons this Court and others "honor Congress's choice" to create a strict and mandatory exhaustion requirement. *Ross*, 578 U.S. at 639. Exhaustion "afford[s] corrections officials time and opportunity to

address complaints internally" which "might improve prison administration and satisfy the inmate, thereby obviating the need for litigation." *Porter*, 534 U.S. at 525. Requiring exhaustion gives public officials the opportunity to correct mistakes, resolve claims more quickly than courts, and build an administrative record that can help the court in resolving claims that do end up in litigation. *Woodford*, 548 U.S. at 89. That is why this Court has "repeatedly rejected lower courts' attempts to create end-runs around the statute's exhaustion requirement." *Wexford Health v. Garrett*, 140 S. Ct. 1611, 1612 (2020) (Thomas, J., dissenting from the denial of certiorari in a case similar to this one).

Adjudicating PLRA exhaustion is subject to "the usual practice" under the applicable rules of procedure unless those rules are inconsistent with the PLRA. *Perttu*, 605 U.S. at 468; *Jones*, 549 U.S. at 203. Thus, in *Jones*, this Court rejected a circuit court's rules that effectively required prisoners to specially plead the affirmative defense of exhaustion. 549 U.S. at 216. This is because the text of the PLRA did not create such a pleading rule. *Id.* Likewise, last term, the Court held that factual disputes about exhaustion should be resolved by a jury when those claims are intertwined with the merits of the underlying claim. *Perttu*, 605 U.S. at 479.

II. Factual Background.

Respondent Jeremy Allen was an inmate at the Minnesota Correctional Facility-Faribault between July 26, 2017 and April 18, 2022. Appx. 3a. Just over four months into his five-year sentence, Allen fell out of his bunk and injured his hand. Appx. 10a. Allen was treated for his injuries by staff medical personnel as well as by

personnel employed by DOC's contractor, Centurion. Appx. 10a. Allen complains that delays in his treatment worsened his injuries. Appx. 3a.

The Minnesota Department of Corrections (DOC) has an extensive grievance process. ECF Doc. 76. Allen, however, did not file a grievance about the treatment of his hand injury with the DOC at any time. Appx. 3a. Instead, Allen sued in state court November 2021, naming several Centurion employees, Minnesota DOC Commissioner Paul Schnell, DOC Medical Director James Amsterdam, and 10 John/Jane Doe Defendants, who were identified as DOC medical staff. Appx. 34a. After the case was promptly removed to federal court, Schnell and Amsterdam were dismissed by stipulation in January 2022, leaving no named DOC defendants in the lawsuit. Appx. 34a. Allen sought leave to amend his Complaint on April 29, 2022, eleven days after his release from DOC custody.[2] Appx. 35a. Allen's amended complaint identified Cheryl Piepho and Charles Brooks, both DOC employees, as defendants in his § 1983 claim. Appx. 35a. The remaining DOC defendants were dismissed with prejudice. (ECF Doc. 61.)

III. Procedural History.

Piepho and Brooks brought a motion for summary judgment shortly after answering, arguing that the claims against them were barred under the PLRA because Allen never filed a grievance with the DOC. Appx. 34a-35a. The district court denied the motion, determining that the exhaustion analysis was controlled by the amended

2. There were no DOC defendants in the lawsuit at the time, so there was no opportunity for DOC defendants to oppose the amendment.

complaint. Appx. 37a-40a. Because the amended complaint was filed after Allen's release, the PLRA's exhaustion requirement no longer applied. *Id*. The court further determined that the amended complaint did not relate back to the original complaint. Appx. 38a-39a. The court found, however, that there was both a circuit split and an intra-district split on the PLRA exhaustion issue, and certified the issue for interlocutory appeal under 28 U.S.C. § 1292(b). Appx. 23a-32a.

The Eighth Circuit granted interlocutory review and affirmed. Appx. 21a. The court determined that "the PLRA is silent – both explicitly and implicitly – on amendments to complaints and the application of the relation back doctrine." Appx. 6a. An amended complaint, in the panel majority's view, renders the original complaint without legal effect. Appx. 6a-7a. Because Allen was no longer an inmate at the time the operative complaint was filed and the amended complaint did not relate back, Allen's claim against Piepho and Brooks were not barred despite his admitted failure to exhaust. Appx. 6a-7a.

Judge Loken dissented, criticizing the panel for disregarding statutory text and ignoring the existence of a circuit split. Judge Loken would have reversed because an amended complaint does not control when an action is "brought" for PLRA purposes. Appx. 11a-12a, 15a. Because it is undisputed that Allen was incarcerated when his claims were "brought" and because he did not even try to use the grievance process before bringing them, Judge Loken would have held that the claims were barred by the PLRA. Appx. 15a-17a.

As Judge Loken pointed out, Allen's purported reason for naming the Petitioners as "John Does" in his original complaint – that he did not know their names – could

have been easily avoided had he filed an administrative grievance at any point in the four years between his injury and his lawsuit. Appx. 20a. The panel majority "compounded its first error" by ruling that the amended complaint did not relate back under Rule 15. Appx. 17a-18a.

Judge Loken thought "this important issue warrants en banc or Supreme Court review." Appx. 17a. The court denied Petitioners' motion for rehearing en banc, with four of the eleven circuit judges voting to grant the petition. Appx. 42a.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari to decide how the PLRA exhaustion rule applies to claims that are added after a plaintiff's release from confinement. The court below deepened a clear and intractable split on this issue. Moreover, cases from circuits that follow the minority rule show how the Eighth Circuit's decision subverts Congress' goals and can lead to gamesmanship, disincentivizing the use of grievance processes that Congress sought to encourage. This case presents an ideal vehicle to resolve the split because it is the only issue in the case at this juncture, and will terminate the litigation if decided in Petitioners favor.

I. The Eighth Circuit's Split Decision Deepened A Conflict Between The Circuits About PLRA Exhaustion.

Lower courts agree that the exhaustion requirement does not apply to former inmates who bring federal claims after they are released. *See, e.g.*, *Nerness v. Johnson*, 401

F.3d 874, 876 (8th Cir. 2005). Courts are split, however, on the application of exhaustion with respect to inmates who begin their lawsuits while incarcerated but amend their complaints to add unexhausted claims after they are released.

A majority of the circuits to have considered the issue hold that the exhaustion rule depends on the confinement status at the time the lawsuit is "brought," which means that failure to exhaust applies equally to any new claims asserted in an amended complaint. *May v. Segovia*, 929 F.3d 1223, 1229 (10th Cir. 2019); *Stites v. Mahoney*, 594 F. App'x 303, 304 (7th Cir. 2015); *Cox v. Mayer*, 332 F.3d 422, 428 (6th Cir. 2003). Congress was, after all, trying to decrease the number of inmate cases being *filed* in federal court. *Harris v. Garner*, 216 F.3d 970, 978 (11th Cir. 2000) (en banc). *See also Makell v. Cnty. of Nassau*, 599 F. Supp. 3d 101, 109 (E.D.N.Y. 2022) (surveying split and holding that allowing the unexhausted claims to proceed "would subvert the clear intentions of Congress in requiring exhaustion under the PLRA").

The leading case is *Harris*, an en banc decision of the Eleventh Circuit. 216 F.3d at 972. In *Harris*, the claims of six former inmates were dismissed because they failed to allege a "physical injury," another inmate litigation restriction that Congress wrote into the PLRA. *Id.* (citing 42 U.S.C. 1997e(e)). The plaintiffs remained subject to PLRA filing restrictions even after their release, according to the Court, because PLRA's use of the word "brought" makes clear that what matters is their confinement status at the beginning of the case. *Id.* at 974. The term "brought" refers to the commencement of a lawsuit, a meaning that has been consistently applied and used by

this Court and Congress for more than a hundred years. *Id.* This textual analysis is also consistent with Congress' intent: "Congress made confinement status at the time of filing the criterion, because that is the point at which the difference in opportunity costs was causing the problem Congress was trying to solve: the large number of filings." *Id.* at 978.

The Eleventh Circuit and four others have since extended *Harris* to the PLRA exhaustion rule. *Bargher v. White*, 928 F.3d 439 (5th Cir. 2019); *May*, 929 F.3d 1223; *Stites*, 594 F. App'x 303; *Smith v. Terry*, 491 F. App'x 81, 83 (11th Cir. 2012) (per curiam); *Cox*, 332 F.3d at 428. In *May*, for example, the Tenth Circuit rejected a former inmate's argument that PLRA exhaustion did not apply to the claims in his second amended complaint because he was no longer incarcerated at the time he filed it. 929 F.3d at 1227-8. Applying this Court's decision in *Jones*, the court held "[t]he amended complaint, as the operative complaint, supersedes the original complaint's allegations *but not its timing*." *Id.* at 1229 (emphasis added). Because exhaustion is a timing rule under the PLRA, exhaustion is determined by the plaintiff's confinement status at the time of the original complaint. *Id.*

The Third and Ninth Circuits have rejected this straightforward textual analysis. In *Jackson*, the Ninth Circuit read *Jones* as requiring courts to apply PLRA exhaustion "based on when a plaintiff files the operative complaint." *Jackson v. Fong*, 870 F.3d 928, 935 (9th Cir. 2017). Because an amended or supplemental complaint is the operative complaint, that court concluded that a prisoner who files an amended pleading after release from confinement is not subject to exhaustion. *Id.* at 936-7. The

Third Circuit applied similar logic in *Garrett v. Wexford Health*, reversing summary judgment for the defendants when a former inmate amended his complaint after his release to add unexhausted claims. 938 F.3d 69, 84 (3d Cir. 2019).

The Court should grant certiorari here to resolve the split in authority and restore Congress' exhaustion prescription to its full scope. With a clearly entrenched split, there is little benefit in allowing this issue to continue to percolate through the lower federal courts. The discussion above shows an intractable split on an issue that continues to arise throughout the country.

II. This Case Presents A Recurring Issue Of National Importance Because The Rule Adopted By The Eighth Circuit Allows For An End-Run Around PLRA Exhaustion.

Judge Loken, dissenting from the panel decision below, warned that the panel majority's decision here had "created a risk of 'opening the floodgates' to increased lawsuits the PLRA was intended to reduce." Appx. 20a. Cases from the Third and Ninth Circuits illustrate the point.

The minority rule encourages prisoners to file unexhausted claims as their release date approaches, "giv[ing] prisoners a strong inducement to skip the administrative process." *Booth*, 532 U.S. at 740-41. That very tactic was rewarded in *Olmos v. Well Path*, No. CV-19-08036-PCT-GMS (JFM), 2020 WL 4188042, at *3 (D. Ariz. July 21, 2020). There, an Arizona inmate filed a claim the day before the statute of limitations was to run, with

just months left on his sentence. *Id.* at *3. Shortly after his release, he sought to make "largely plainly superficial" amendments to this complaint. *Olmos v. Well Path*, No. CV-19-8036-PCT-GMS (JFM), 2020 WL 4550465, at *6 (D. Ariz. Feb. 5, 2020), *report and recommendation*. While questioning the plaintiff's motives, the district court allowed the amendment, overruling the report and recommendation of a magistrate judge who had denied the amendment as a bad faith attempt to evade PLRA exhaustion. 2020 WL 4188042, at *3. Likewise, in *Ricker v. Salas,* a former California inmate filed an amended complaint asserting an unexhausted claim which was identical to the one he had filed while incarcerated "[a]side from renumbering paragraphs and one cross reference." No. 19-CV-807 TWR (LL), 2020 WL 6484639, at *2 (S.D. Cal. Nov. 3, 2020). Bound by *Jackson*, the court allowed the claim to proceed.

Similar results occurred in the Third Circuit in the wake of *Garrett*. In *Cheeseboro v. Byard*, for example, an inmate chose to file a lawsuit instead of a grievance and then amended his complaint within days of his release. No. 22-CV-01781, 2024 WL 1252829, at *1 (E.D. Pa. Mar. 22, 2024). The Court applied *Garrett* to hold that the amended complaint "cured" the defect of the plaintiff's admitted failure to exhaust. *Id. Accord Singleton v. Harry*, No. 1:13-CV-02711, 2020 WL 7366365, at *9 (M.D. Pa. Sept. 21, 2020), *report and recommendation adopted*, No. 1:13-CV-02711, 2020 WL 6689646 (M.D. Pa. Nov. 13, 2020); *see also Downey v. Pa. Dep't of Corr.*, 968 F.3d 299, 309 (3d Cir. 2020) (Applying *Garrett* where in inmate failed to use the grievance process because "[a]ll that matters is that he was no longer incarcerated when he filed the [second amended complaint]…").

These cases illustrate how litigation incentives change for an inmate who is near both their statute of limitations and their release date, because "[o]pportunity costs of litigation rise following release, diminishing the need for special precautions against weak suits." *Witzke v. Femal*, 376 F.3d 744, 750 (7th Cir. 2004) (quoting *Kerr v. Puckett*, 138 F.3d 32, 323 (7th Cir. 1998)). Such a litigant, in Congress's view, was likely to have "free time on their hands" in prison, with much to gain and little to lose from proceeding to court without attempting to resolve the dispute using the internal grievance process. *Harris*, 216 F.3d at 978. The cases above are a few of the many commenced by incarcerated persons every day and demonstrate the likely recurrence of this issue if this Court declines certiorari.

III. The Eighth Circuit's Decision Is Incorrect.

The court below ignored the PLRA's text as well as the existence of a split in authority. Appx. 5a-11a. The statutory phrase "[n]o action shall be brought" unambiguously refers to the beginning of a case, making the plaintiff's confinement status at that time the status that counts for exhaustion purposes. *Harris*, 216 F.3d at 978; *Stites*, 594 F. App'x at 304. The PLRA, therefore, "is not truly silent regarding whether Allen's amended complaint, rather than his initial complaint, controls a question of timing – when he 'brought' his PLRA action against the John Doe and Jane Doe defendants." Appx. 15a. As the Tenth Circuit reasoned in *May*, "[t]he amended complaint, as the operative complaint, supersedes the original complaint's allegations but not its timing." *May*, 929 F.3d at 1229.

Because exhaustion is a timing rule and the PLRA text *does* speak to timing, the reliance of the Court below on *Jones* was misplaced. As Justice Thomas wrote in dissenting from the denial of certiorari in *Garrett*, *Jones* "actually confirms that the PLRA's prefiling requirements displace the Federal Rules of Civil Procedure, including Rule 15." *Garrett*, 140 S. Ct. at 1612 (Thomas, J., dissenting from the denial of cert). Because the text of the PLRA makes plaintiff's confinement status at the beginning of the lawsuit dispositive of the exhaustion issue, the Court need not decide whether the amended complaint relates back to the original complaint.

This case also highlights why Congress's exhaustion rule makes sense. *Porter*, 534 U.S. at 525. Allen's hand injury occurred just months into his five-year sentence. Appx. 3a. The delay in treatment that Allen complains of may have been averted through the grievance process because it may have afforded the DOC an opportunity to correct any mistake as to scheduling appointments. *See Woodford*, 548 U.S. at 89 (noting that "[e]xhaustion gives an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court, and it discourages disregard of [the agency's] procedures") (internal quotations omitted). The grievance process here may have "obviate[ed] the need for litigation." *Porter*, 534 U.S. at 525.

Instead, Allen chose to proceed to court, an "end-run" around PLRA exhaustion that this Court has consistently rejected. *Garrett*, 140 S. Ct. at 1612. This both deprives the Petitioners of a statutory defense to which they were entitled at the time the case was brought and revives a claim that should have been extinguished by Allen's decision to file a lawsuit rather than use the available grievance process.

IV. This Case Is An Ideal Vehicle In Which To Resolve An Entrenched Circuit Split.

This case is an ideal vehicle in which to resolve this deepening split. Exhaustion is the sole issue in the case in its current posture, and deciding it in Petitioners' favor would end this litigation, as the only remaining claims are the § 1983 claims against Petitioners. Appx. 28a; 31a. There are also no factual disputes about the exhaustion issue, as Allen admits he did not use the available grievance process. Appx. 25a. Additionally, Petitioners raised the PLRA exhaustion issue shortly after answering and have maintained a consistent litigating position throughout, with none of the waiver problems that may have complicated this Court's consideration of the issue in *Garrett*. *See* Garrett Br. in Opp. at 27-30, *Wexford Health v. Garrett*, No. 19-867 (March 11, 2020). Moreover, as Garrett's counsel pointed out in that case, Garrett had exhausted the grievance process by the time of the operative complaint, so "all of the benefits of the grievance process inured before the district court undertook to adjudicate Respondent's claims in the [third amended complaint]." *Id*. at 30. The same cannot be said here: Allen *never* filed a grievance about any alleged delay in treatment. Appx. 3a. Instead of doing so, he waited a few years and then filed a lawsuit, a practice that Congress intended to prohibit by making mandatory exhaustion the "centerpiece" of the PLRA. *Woodford*, 548 U.S. at 85.

The split in authority has deepened since this Court's last occasion to consider this issue, with the Eighth Circuit issuing a precedential decision that joined the minority of circuits. In practical terms, that means that the "end-run"

around PLRA exhaustion that Justice Thomas identified in *Garrett* is now available in seven additional states. With this case presenting none of the vehicle problems that may have been present in *Garrett*, the time to resolve the split is now.

CONCLUSION

Petitioners respectfully ask this Court to grant the petition for a writ of certiorari.

Dated: September 19, 2025

Respectfully Submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED MARCH 26, 2025

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 23-3658

JEREMY JAMES ALLEN,

Plaintiff-Appellee,

v.

DR. JAMES AMSTERDAM, MEDICAL DIRECTOR, MN DOC, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; DR. EDWARD SHAMAN, M.D., IN THEIR INDIVIDUAL CAPACITY; ALYAS MASIH, M.D., IN THEIR INDIVIDUAL CAPACITY; GENE KLIBER, P.A., IN THEIR INDIVIDUAL CAPACITY; CENTURION OF MINNESOTA, LLC,

Defendants,

CHARLES BROOKS,
IN THEIR INDIVIDUAL CAPACITY,

Defendant-Appellant;

RITA IVERSON,
IN THEIR INDIVIDUAL CAPACITY,

Defendant,

Appendix A

CHERYL PIEPHO,
IN THEIR INDIVIDUAL CAPACITY,

Defendant-Appellant,

MINNESOTA DEPARTMENT OF
CORRECTIONS; PAUL SCHNELL,
IN THEIR INDIVIDUAL CAPACITY,

Defendants.

Appeal from United States District Court
for the District of Minnesota

Submitted: June 12, 2024
Filed: March 26, 2025

Before LOKEN, ERICKSON, and GRASZ, Circuit Judges.

ERICKSON, Circuit Judge.

Jeremy James Allen filed his original complaint in this matter while incarcerated at the Minnesota Correctional Facility in Faribault. After he was released from custody, Allen amended his complaint. Defendants Cheryl Piepho and Charles Brooks moved for summary judgment, contending Allen's failure to exhaust his administrative remedies at the time he filed his original complaint acted to bar his claim. The district court[1] denied their motion

1. The Honorable Susan Richard Nelson, United States District Judge for the District of Minnesota.

on the grounds that: (1) the Prison Litigation Reform Act of 1995's ("PLRA") exhaustion requirement did not apply because Allen's amended complaint was filed after his release, and (2) the amended complaint did not relate back under Federal Rule of Civil Procedure 15(c). We affirm.

I. BACKGROUND

On November 10, 2021, Allen filed a complaint against several named officials at the Minnesota Correctional Facility in Faribault and John and Jane Doe, who were unidentified members of the medical staff. His complaint alleged deliberate indifference and medical malpractice claims arising from a hand injury occurring in December of 2017. During his incarceration, from July 26, 2017, through April 18, 2022, Allen never filed a grievance with prison officials related to either his injury or medical treatment. He instead commenced this action in state court, which was removed to federal court on December 17, 2021.

While his action was pending and less than two weeks after Allen was released from custody, the district court granted Allen's unopposed motion for leave to amend his complaint.[2] In his amended complaint, Allen substituted Charles Brooks and Cheryl Piepho for the John and Jane Doe defendants. All defendants jointly moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure

2. The dissent asserts the timing of the unopposed amended complaint reflects an intentional strategy by Allen's counsel to deprive the defendants of a defense. There is scant evidence in the record to support this assertion.

12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim. Their motion did not raise exhaustion of administrative remedies as a reason for dismissal.

After various parties and claims were voluntarily dismissed, the only remaining claim was Allen's deliberate indifference claim against Brooks and Piepho. The district court denied their motion to dismiss on qualified immunity grounds, finding that Allen plausibly alleged a violation of his Eighth Amendment right to adequate medical care by Brooks and Piepho.

On February 6, 2023, Brooks and Piepho filed their answer to the Amended Complaint raising for the first time a failure to exhaust defense. After being granted leave to raise the failure to exhaust issue in a summary judgment motion, Brooks and Piepho argued that Allen had filed his original complaint while incarcerated and his failure to exhaust his administrative remedies was fatal to his claims. The district court denied Brooks and Piepho's motion on the basis that Allen's amended complaint was brought after his release from incarceration and was not subject to the exhaustion requirement of the PLRA. Additionally, the district court ruled that Allen's amended complaint did not relate back to his original complaint under Federal Rule of Civil Procedure 15(c) because naming John and Jane Doe did not qualify as a "mistake" for purposes of application of the relation back doctrine. Brooks and Piepho appeal.

II. ANALYSIS

We review a district court's application and interpretation of the PLRA and Federal Rule 15(c) *de novo*. *Foulk v. Charrier*, 262 F.3d 687, 703 (8th Cir. 2001) (PLRA); *Heglund v. Aitkin Cnty.*, 871 F.3d 572, 579 (8th Cir. 2017) (Rule 15(c)). In *Jones v. Bock*, the Supreme Court held that when the PLRA is silent on an issue, that silence "is strong evidence that the usual practice should be followed." 549 U.S. 199, 212, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007). The *Bock* Court emphasized that "[i]n a series of recent cases, we have explained that courts should generally not depart from the usual practice under the Federal Rules on the basis of perceived policy concerns." *Id.*

In ascertaining whether it is appropriate to depart from the Federal Rules, the *Bock* Court looked to the text of the PLRA itself to determine whether it explicitly or implicitly justified deviating from the usual procedural practice beyond the departures set forth in the PLRA. *Id.* at 214. The Supreme Court has applied a similar approach in other cases where Courts of Appeals have attempted to impose new pleading standards that have no basis in the text of the Federal Rules or the substantive statute. *See, e.g., Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 168, 113 S. Ct. 1160, 122 L. Ed. 2d 517 (1993) (determining it could not square the heightened pleading standard applied by the Fifth Circuit in an action under 42 U.S.C. § 1983 with the liberal notice pleading standard in the Federal Rules); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 515, 122 S. Ct.

992, 152 L. Ed. 2d 1 (2002) (noting the Federal Rules do not contain a heightened pleading standard for employment discrimination suits and explaining that a new standard can only be obtained by amending the rules, not judicial interpretation); *Hill v. McDonough*, 547 U.S. 573, 582, 126 S. Ct. 2096, 165 L. Ed. 2d 44 (2006) (rejecting the imposition of a specific pleading standard for suits filed by capital litigants pursuant to 42 U.S.C. § 1983, as pleading requirements are mandated by the Federal Rules of Civil Procedure and not through case-by-case determinations in the federal courts). This line of precedent reflects and respects that "when Congress meant to depart from the usual procedural requirements, it did so expressly." *Bock*, 549 U.S. at 216.

Here the PLRA is silent—both explicitly and implicitly—on amendments to complaints and the application of the relation back doctrine. We must then apply the typical rules governing amendments and relation back in civil actions. To do otherwise would "exceed[] the proper limits on the judicial role." *Id.* at 203.

In our Circuit, "[i]t is well-established that an amended complaint supersedes an original complaint and renders the original complaint without legal effect." *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000) (citing *Washer v. Bullitt Cnty.*, 110 U.S. 558, 562, 4 S. Ct. 249, 28 L. Ed. 249 (1884)). This line of cases tells us that Allen's original complaint was rendered devoid of legal effect once the amended complaint was filed. This left the amended complaint as the operative complaint under the PLRA. At the time Allen filed his amended complaint, he

was no longer an inmate, so the exhaustion requirement did not apply.

Our precedent also makes plain that when an amended complaint identifies by name a defendant previously docketed as John or Jane Doe, the "amendment ordinarily will *not* be treated as relating back to the prior pleading, unless certain conditions set forth in Fed.R.Civ.P. 15(c) are satisfied." *Foulk*, 262 F.3d at 696. Under Federal Rule of Civil Procedure 15(c), an amended complaint that changes the name of a defendant relates back to the date of the original pleading only

> if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
>
> (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
>
> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

Fed. R. Civ. P. 15(c)(1)(C).

Rule 15(c)(1)(B) requires us to consider whether "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted

to be set out—in the original pleading." This portion of the rule is satisfied because Allen's claims in his amended complaint arose out of the same conduct that he alleged in his original complaint.

The next consideration in Rule 15(c) is also satisfied. The record contains no indication that Brooks and Piepho received notice of Allen's original complaint. Without notice, Brooks and Piepho did not know nor should have known of Allen's civil action at the time he filed his original complaint.

Finally, this Court has decided that including a John Doe defendant is not a mistake concerning the proper party's identity under Rule 15(c). *See Heglund*, 871 F.3d at 580 (naming a party as a John or Jane Doe is "an intentional misidentification, not an unintentional error, inadvertent wrong action, or 'mistake.'"). Several of our sister Circuits have held the same. *See Garrett v. Fleming*, 362 F.3d 692, 696 (10th Cir. 2004); *Wayne v. Jarvis*, 197 F.3d 1098, 1103 (11th Cir. 1999), *overruled in part on other grounds by Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003) (en banc); *Jacobsen v. Osborne*, 133 F.3d 315, 320-21 (5th Cir. 1998); *Barrow v. Wethersfield Police Dep't*, 66 F.3d 466, 469-70 (2d Cir. 1995); *Worthington v. Wilson*, 8 F.3d 1253, 1256-57 (7th Cir. 1993).

Allen's use of John and Jane Doe in his original complaint was not a "mistake" for purposes of Rule 15(c); therefore, his amended complaint does not relate back to his original complaint. Without relation back, Allen is not subject to the exhaustion requirements of the PLRA.

III. CONCLUSION

We affirm the district court's decision and remand for further proceedings.

LOKEN, Circuit Judge, dissenting.

Congress enacted the Prison Litigation Reform Act of 1995 ("PLRA"), 42 U.S.C. § 1997e *et seq.*, to reduce the quantity and improve the quality of prisoner suits challenging conditions of their confinement or the conduct of their custodians. The PLRA mandates a variety of reforms, among the most important of which is the requirement that inmates "exhaust prison grievance remedies before initiating a lawsuit." *Jones v. Bock*, 549 U.S. 199, 202-04, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007).

In December 2017, Jeremy Allen fell from his bunk, injured his wrist, and sought treatment from the Minnesota Correctional Facility's medical providers. In November 2021, without filing or attempting to file a prison grievance concerning the medical care provided, Allen's counsel filed this action in state court, alleging deliberate indifference to a known serious condition and medical malpractice by three physician employees of the corporation that provides medical treatment to Minnesota inmates and by "John and Jane Does A-F," who were described as "nurses employed by the Minnesota Department of Corrections" on duty the nights of December 3-6, 2017.[3] In *Johnson v. Jones*, we held that "[u]nder the plain language of section 1997e(a), an inmate must exhaust administrative remedies *before* filing suit in federal court. . . . If exhaustion was not completed

3. Allen also asserted official capacity claims against the Minnesota Commissioner of Corrections, the Medical Director of the Department of Corrections, and the corporate defendant. After defendants removed the case to federal court, these claims and the medical malpractice claims were dismissed with prejudice.

at the time of filing, dismissal is mandatory." 340 F.3d 624, 627 (8th Cir. 2003) (emphasis in the original). Thus, the initial complaint should have been promptly dismissed.

Allen was released from incarceration on April 22, 2022, with this action still pending. On April 29, the district court granted counsel's unopposed motion for leave to file an amended complaint naming two of the previous John Doe and Jane Doe defendants, Charles Brooks and Cheryl Piepho. On June 29, 2023, the district court denied their motion for summary judgment, holding that Allen was not required to exhaust prison grievance remedies against Brooks and Piepho because they were first named in the lawsuit after Allen's release. The court now affirms that ruling.

1. The court first decides an issue that has divided other circuits – whether a prisoner who initially files an action while incarcerated can avoid the PLRA's exhaustion requirement by filing an amended complaint after he is released. Because the PLRA expressly applies to a civil action "brought . . . by a prisoner confined in [a] jail, prison, or other correctional facility," § 1997e(a), it is generally accepted that the PLRA's exhaustion defense does *not* apply to an action filed by a *former* prisoner to recover damages for injuries suffered while confined. *See Harris v. Garner*, 216 F.3d 970, 979-80 (11th Cir. 2000) (en banc), *cert. denied*, 532 U.S. 1065, 121 S. Ct. 2214, 150 L. Ed. 2d 208 (2001).[4] But consistent with the plain meaning of

4. We held PLRA exhaustion does apply to an action filed while the plaintiff was incarcerated but not concluded until after his release. *See Jefferson v. Roy*, No. 16-cv-3137, 2019 U.S. Dist.

§ 1997e(e), the Eleventh Circuit in *Harris* concluded that an *amended* pleading filed after the prisoner's release does not affect when the action was "brought." "[T]he confinement status of the plaintiffs at any time after the lawsuit is filed is beside the point." *Id.* at 981. A majority of the circuits that have addressed this issue agree. *See May v. Segovia*, 929 F.3d 1223, 1229 (10th Cir. 2019); *Stites v. Mahoney*, 594 F. App'x 303, 304 (7th Cir. 2015); *Cox v. Mayer*, 332 F.3d 422, 428 (6th Cir. 2003). I would follow these sound precedents. The court does not even note their existence.

In *Jones v. Bock*, the Supreme Court reversed a circuit court decision holding that, if a PLRA complaint includes an unexhausted claim, the term "no action shall be brought" requires dismissal of the entire action, including the prisoner's fully exhausted claims. The Court reasoned that the term "no action shall be brought" "has not been thought to lead to the dismissal of an entire action if a single claim fails to meet the pertinent standards. . . . As a general matter, if a complaint contains both good and bad claims, the court proceeds with the good and leaves the bad." 549 U.S. at 220-21. The decision in *Bock* turned on a pleading issue, "whether exhaustion must be pleaded by the plaintiff or is an affirmative defense." *Id.* at 212. Because the PLRA is silent on this issue, the Court held "that the usual practice should be followed," namely, the notice pleading standard under Rule 8(a) of the Federal Rules of Civil Procedure. *Id.* "[T]he PLRA's screening

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LEXIS 145080, 2019 WL 4013960 (D. Minn. Aug. 26, 2019), *aff'd*, 816 F. App'x 35 (8th Cir. 2020).

requirement does not – explicitly or implicitly – justify deviating from the usual procedural practice *beyond the departures specified by the PLRA itself*." *Id.* at 214 (emphasis added).

The amended complaint issue in this case is very different. The issue is timing, not pleading – whether the initial complaint or the amended complaint determines when the action was "brought" against two John Doe and Jane Doe defendants who were first identified in a post-release amended complaint. Allen's counsel filed the initial complaint more than four years after medical treatment of his injured arm began. He was still confined, but *no* claim was exhausted. Mistakenly, defendants' initial attorneys did not immediately move to dismiss for lack of exhaustion. Months later, Allen's counsel was granted leave to file the amended complaint, seven to ten days after his release from confinement. Allen argues the amended complaint controls and therefore the PLRA's exhaustion defense *does not apply* to claims against Brooks and Piepho that arose during confinement. The court concludes the amended complaint controls because it "supersedes an original complaint and renders the original complaint *without legal effect*. . . . Allen's original complaint was rendered devoid of legal effect once the amended complaint was filed." *Infra* pp. 4-5.

With due respect, I think this categorical rule "cannot be correct." *Segovia*, 929 F.3d at 1228. It is based on general statements in opinions deciding jurisdictional issues. When federal jurisdiction is at issue, the amended complaint is nearly always controlling. *See Royal Canin*

U. S. A., Inc. v. Wullschleger, 604 U.S. 22, 31-38, 145 S. Ct. 41, 220 L. Ed. 2d 289 (2025); *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 473-74, 127 S. Ct. 1397, 167 L. Ed. 2d 190 (2007) ("[W]hen a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the amended complaint to determine jurisdiction."); *Washer v. Bullitt Cnty.*, 110 U.S. 558, 562, 4 S. Ct. 249, 28 L. Ed. 249 (1884); *cf.* 28 U.S.C. § 1653. A significant exception to that "rule" demonstrates that categorical rules are rarely appropriate for these types of issues – a party's domicile when the original complaint was filed controls whether complete diversity exists; otherwise, a party could "manipulate federal jurisdiction" by changing domicile and filing an amended complaint. *New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc.*, 101 F.3d 1492, 1503 (3d Cir. 1996). Here, Allen's amended complaint did not manipulate federal jurisdiction. It prejudicially manipulated the existence of an ironclad affirmative defense. I would reverse.

Without question, a timely amended complaint supersedes the original complaint and becomes the operative PLRA complaint. But it does not render the initial complaint "without legal effect." For example, the date of the original filing remains the date to determine compliance with the ninety-day service requirement in Federal Rule 4(m). *See Lee v. Airgas Mid-S., Inc.*, 793 F.3d 894, 898 (8th Cir. 2015); 4B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1137 (4th ed. 2024). Otherwise, "dilatory plaintiffs could evade [the Rule 4(m)] time deadline by taking advantage of the opportunity under Fed.R.Civ.P. 15(a)." *Bolden v. City of*

Topeka, 441 F.3d 1129, 1148 (10th Cir. 2006). Just like Allen seeks to do here. Nor does an amended complaint void an admission contained in the original complaint. *See United States v. McKeon*, 738 F.2d 26, 31 (2d Cir. 1984). A party's admissions in the original complaint may be offered into evidence irrespective of later amendments. *See First Bank of Marietta v. Hogge*, 161 F.3d 506, 510 (8th Cir. 1998); *Henderson v. Shell Oil Co.*, 173 F.2d 840, 842 (8th Cir. 1949). The court's "usual practice" analysis of this issue is unsound.

Returning to the controlling analysis in *Bock*, I conclude – as other circuits have concluded – that the PLRA is not truly silent regarding whether Allen's amended complaint, rather than his initial complaint, controls a question of timing – when he "brought" his PLRA action against the John Doe and Jane Doe defendants. As the Eleventh Circuit noted in *Harris*, the Supreme Court has repeatedly concluded that the term "brought" in other statutes refers to the "filing or commencement of a lawsuit, not to its continuation." 216 F.3d at 973-74. "This long history of established meaning is important, because we readily presume that Congress knows the settled legal definition of the words it uses, and uses them in the settled sense." *Id.* at 974. The court in *Harris* concluded that the amended pleading did not affect this timing issue; the prisoner's confinement status "any time after the lawsuit is filed is beside the point." *Id.* at 981.[5] As noted above,

5. The Eleventh Circuit reaffirmed its decision in *Harris* after the Supreme Court's decision in *Bock*. *Smith v. Terry*, 491 F. App'x 81, 83 (11th Cir. 2012).

three other circuits agree.[6] And in dissenting from denial of a certiorari petition to review a Third Circuit decision that conflicted with *Harris*, Justice Thomas noted, "we have repeatedly rejected lower courts' attempts to create end-runs around the [PLRA's] exhaustion requirement." *Wexford Health v. Garrett*, 140 S. Ct. 1611, 1612, 206 L. Ed. 2d 955 (2020).

Under the *Harris* interpretation of the statute's plain meaning, the only relevant inquiry is whether Allen's claims against Brooks and Piepho for injuries suffered during confinement were exhausted when he filed the initial lawsuit. Put simply, Allen "brought" his claims when he filed his original complaint – not when he amended it. Because he did not exhaust any prison remedies before filing, the PLRA expressly bars this action. When a PLRA action is filed during confinement and is pending when the prisoner is released, the post-release assertion of new claims or the assertion of old claims against new defendants requires a new PLRA action.

The Supreme Court in *Bock* did not address the phrase "no action shall be brought" in this context. *See Garrett*, 140 S. Ct. at 1612. Indeed, the Court explicitly stated that "the PLRA mandates early judicial screening . . . and requires prisoners to exhaust prison grievance procedures *before* filing suit." *Bock*, 549 U.S. at 202, 211

6. Our decision in *Johnson*, which the court simply ignores, is consistent with these authorities: "Under the plain language of section 1997e(a), an inmate must exhaust administrative remedies *before* filing suit in federal court." 340 F.3d at 627 (emphasis in original).

(emphasis added). As Justice Thomas noted in *Garrett*, the Supreme Court has repeatedly rejected lower court attempts to end-run PLRA exhaustion. 140 S. Ct. at 1612. It rejected a special circumstances exception that ran counter to the PLRA's text in *Ross v. Blake*, 578 U.S. 632, 648, 136 S. Ct. 1850, 195 L. Ed. 2d 117 (2016). It declined to allow improper exhaustion in *Woodford v. Ngo*, 548 U.S. 81, 83, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006). It refused to limit the exhaustion requirement to lawsuits challenging general prison conditions in *Porter v. Nussle*, 534 U.S. 516, 520, 122 S. Ct. 983, 152 L. Ed. 2d 12 (2002). Thus, following *Harris* and the majority of circuits on this question of timing is not "deviating from the usual procedural practice *beyond the departures specified by the PLRA itself*." *Bock*, 549 U.S. at 214 (emphasis added).

Here, the court disregards the text of § 1997e(a) and (e), joining the minority on an issue that has divided the circuits, and undermining, at least in this circuit, the intent of Congress in enacting the PLRA "to reduce the quantity and improve the quality of prisoner suits." *Bock*, 549 U.S. at 203-04 (quotation omitted). Like Justice Thomas, I think this important issue warrants en banc or Supreme Court review.

2. The court compounds its first error by ruling that Allen's amended complaint controls the timing issue *and* does not relate back under Rule 15(c), thereby depriving two original John Doe and Jane Doe defendants of the PLRA exhaustion defense to which they were entitled when the initial complaint was filed. The amended complaint does not relate back, the court concludes,

because "Allen's use of John and Jane Doe in his original complaint was not a 'mistake' for purposes of Rule 15(c)." *Infra* p.6, applying Rule 15(c)(1)(B) and (C)(ii). "Without relation back, Allen is not subject to the exhaustion requirements of the PLRA." *Infra* p.6.

Rule 15(c)(1)(C)(ii) provides that an amended pleading that "changes the party or the naming of the party against whom a claim is asserted" relates back if "the party to be brought in by amendment . . . knew or should have known that the action would have been brought against [him or her], but for a mistake concerning the proper party's identity." The court, applying *Bock's* usual procedural practice directive, concludes that Allen's amended complaint does not relate back because "including a John Doe defendant is not a mistake concerning the proper party's identity under Rule 15(c)." *Infra* p.6, accurately citing *Heglund v. Aitkin Cnty.*, 871 F.3d 572, 580 (8th Cir. 2017), *cert. denied*, 583 U.S. 1093, 138 S. Ct. 749, 199 L. Ed. 2d 608 (2018). In my view, *Heglund* did not establish a "usual practice" that governs this case. Like most if not all of the published Rule 15(c)(1)(C) circuit decisions, *Heglund* involved a statute of limitations issue. There, it was appellants seeking relation back relief, "urg[ing] us to recognize John Doe pleadings as 'mistakes' so that plaintiffs with inadequate knowledge will not be subjected to shorter statutes of limitation than plaintiffs who list the wrong defendant in an original complaint." *Id.* at 580-81. We declined the invitation, as have most circuit courts. *See Singletary v. Pa. Dep't. of Corr.*, 266 F.3d 186, 201 & n.5 (3d Cir. 2001). Here, the decision *not* to relate back benefits Allen, depriving newly-named John Doe defendants of

a PLRA-mandated defense to which they were entitled before his release. In these circumstances, *Bock's* usual procedural practice directive requires far more analysis of the Rule 15(c)(1)(C) factors than the court is willing to undertake.

Moreover, in my view, the district court's ruling on this relation back issue must be reversed for a more serious flaw. The timing of Allen's counsel seeking leave to amend reflects an *intentional* strategy to await Allen's release to deny Brooks and Piepho a valid exhaustion defense. Although "mistake" in Rule 15(c)(1)(C)(ii) is construed as "unintentional error," no case has addressed whether an intent to evade the application of § 1997e(a) will be allowed to succeed. The Supreme Court's consistent enforcement of the exhaustion mandate suggests the answer is no.

In addition, Allen's amended complaint and motion for leave to file did not disclose that the intended effect was to deny Brooks and Piepho an applicable statutory defense. "Perhaps the most important factor . . . for denying leave to amend is that the opposing party will be prejudiced if the movant is permitted to alter a pleading." 6 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1487 at p.701 (2010), citing *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 91 S. Ct. 795, 28 L. Ed. 2d 77 (1971), and other authorities. Had Allen's counsel made this disclosure, leave to amend almost certainly would not have been unopposed, and granting the untimely motion might well have been an

abuse of discretion.[7] Therefore, if we remand, I would order the district court to conduct an evidentiary hearing to determine whether the grant of leave to amend should be revoked, leaving Allen to proceed against Brooks and Piepho under the original complaint. *Cf. Nieves-Luciano v. Hernandez-Torres*, 397 F.3d 1, 4 (1st Cir. 2005) (quotation omitted) ("Interlocutory orders . . . remain open to trial court reconsideration until the entry of judgment.").

Given the common practice of PLRA prisoner plaintiffs and their attorneys to include John Doe defendants (sometimes many of them, known and unknown) in their initial complaints, the court's ruling in this case creates a risk of "opening the floodgates" to increased lawsuits the PLRA was intended to reduce. District courts have the discretion to eliminate most of this risk. I encourage district judges in the Eighth Circuit, when a PLRA suit is filed against John Doe defendants, to adopt as part of the initial screening the case management practice of setting a definite time within which John Doe defendants must be identified or dismissed.

For these reasons, I respectfully dissent.

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7. Allen's counsel defended the initial joinder of John and Jane Doe defendants because he "could not make out the names of the persons making entries" in Allen's prison medical records. Of course, had Allen timely exhausted one or more grievances asserting the medical treatment claims at issue, the identity of the nurses on duty the nights of December 3-6, 2017, would have been disclosed long before November 2021.

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED DECEMBER 7, 2023

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-8009

JEREMY JAMES ALLEN,

Respondent,

v.

CHERYL PIEPHO,
IN THEIR INDIVIDUAL CAPACITY
AND CHARLES BROOKS,
IN THEIR INDIVIDUAL CAPACITY,

Petitioners.

Appeal from U.S. District Court
for the District of Minnesota
(0:21-cv-02689-SRN)

Filed December 7, 2023

ORDER

The unopposed petition for permission to appeal has been considered by the court and is granted. This case is being regularly docketed under case number 23-3658, Jeremy Allen v. Charles Brooks, et al.

Appendix B

December 07, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FILED NOVEMBER 17, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Case No. 21-cv-02689 (SRN/ECW)

JEREMY JAMES ALLEN,

Plaintiff,

v.

CHERYL PIEPHO, CHARLES BROOKS, AND PAUL SCHNELL, EACH IN THEIR INDIVIDUAL CAPACITIES, AND THE MINNESOTA DEPARTMENT OF CORRECTIONS,

Defendants.

Filed November 17, 2023

ORDER ON DEFENDANTS' MOTION FOR CERTIFICATION OF INTERLOCUTORY APPEAL

SUSAN RICHARD NELSON, United States District Judge

This matter is before the Court on the Motion to Amend Order to Certify for Appeal [Doc. No. 93] filed by Defendants Cheryl Piepho and Charles Brooks ("Piepho and Brooks"). Based on a review of the files, submissions, and proceedings herein, and for the reasons below, the Court grants the motion.

Appendix C

I. BACKGROUND

In this action under 42 U.S.C. § 1983, Allen, who was formerly incarcerated at the Minnesota Correctional Facility-Faribault ("MCF-Faribault") from July 26, 2017 through April 18, 2022, asserts that medical providers Piepho and Brooks were deliberately indifferent to his serious medical needs and committed medical malpractice when they treated him during his incarceration at MCF-Faribault. (Am. Compl. [Doc. No. 21] Counts 1–2.)

Initially, Allen brought his claims against several other named officials and medical staff employed by the Minnesota Department of Corrections, its contracted medical provider, Centurion, and John and Jane Does A–F, each in their individual and official capacities, as members of the nursing and medical staff of MCF-Faribault. (*See* Compl. [Doc. No. 1-1].) On January 26, 2022, Mr. Allen served a subpoena on the State to produce information regarding the identities of individuals whose signatures were found in Mr. Allen's DOC medical records. (Moccio Decl. [Doc. No. 83], Ex. 1.) The State identified Piepho and Brooks on March 31, 2022. (Moccio Decl., Ex. 3 at 1.)

Mr. Allen was released from incarceration on April 22, 2022. (Grunseth Decl. [Doc. No. 76], Ex. C.) On April 29, 2022, the Court granted Mr. Allen leave to amend his complaint, and he filed it the next day [Doc. Nos. 20-21]. As relevant here, the Amended Complaint named Piepho and Brooks as defendants, along with other defendants who have since been dismissed.

Appendix C

In May 2023, Piepho and Brooks were granted permission to move for summary judgment before the close of discovery on the narrow question of whether Allen's claims were barred by the Prison Litigation Reform Act ("PLRA") for failure to exhaust his administrative remedies before bringing the action. (*See* Defs.' Mem. in Supp. of Mot. for Summ. J. [Doc. No. 81] at 1-2.) The PLRA provides that "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, 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 PLRA's exhaustion requirement applies only to individuals who are incarcerated or detained, not those who bring federal claims after being released from incarceration. *Nerness v. Johnson*, 401 F.3d 874, 876 (8th Cir. 2005).

It is undisputed that Mr. Allen was incarcerated, and did not file any grievances during his incarceration. (Grunseth Decl. ¶¶ 10-12; *see also* Pl.'s Mem. in Opp'n [Doc. No. 82] at 5 ("Plaintiff does not dispute that he did not exhaust his administrative remedies.").)

In June 2023, the Court denied Piepho and Brooks's summary judgment motion [Doc. Nos. 86 & 87]. The Court found that the PLRA exhaustion requirement did not apply to Allen's claims against Piepho and Brooks because he was not incarcerated when they were first named as Defendants in the Amended Complaint, which is the operative complaint in this action. (June 29, 2023 Order [Doc. No. 87] at 6–7.)

Pursuant to 28 U.S.C. § 1292(b), Piepho and Brooks now wish to pursue an interlocutory appeal of the Court's ruling. They argue that an interlocutory appeal is appropriate because: (1) the question of whether the amended complaint in this case creates a new "operative complaint" and is therefore not subject to the PLRA's exhaustion requirement because the plaintiff was granted leave to amend after his release, presents a controlling question of law; (2) there are substantial grounds for a difference of opinion on this issue; and (3) an appeal would materially advance the ultimate termination of the litigation. (Defs.' Mem. Supp. Certify Interloc. Appeal [Doc. No. 96] at 4–9) (citing 28 U.S.C. § 1292(b)).

Allen does not oppose Defendants' motion. (Pl.'s Nov. 14, 2023 Letter [Doc. No. 102].) In light of the lack of opposition, the hearing on this matter that was scheduled for November 29, 2023 is hereby canceled and the Court issues this ruling based on the parties' current and prior submissions.

II. DISCUSSION

A. Standard to Certify an Interlocutory Appeal

The Order that Defendants seek to appeal was a non-final order. As such, an interlocutory appeal is governed by 28 U.S.C. § 1292. This statute allows a district judge to certify a non-final order for interlocutory appeal where: (1) the order involves a controlling question of law; (2) there exist substantial grounds for difference of opinion on that question; and (3) the immediate appeal of the order

would advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b).

Section 1292 appeals should only be granted "in exceptional cases where a decision on appeal may avoid protracted and expensive litigation, as in antitrust and similar protracted cases." *White v. Nix*, 43 F.3d 374, 376 (8th Cir. 1994). Regarding whether PLRA cases meet this "exceptional" standard, as Defendants note, PLRA cases have previously reached the Eighth Circuit on interlocutory appeal under § 1292. *See Chelette v. Harris*, 229 F.3d 684 (8th Cir. 2000) (holding that PLRA's exhaustion requirement did not create a jurisdictional requirement that the case be dismissed under Fed. R. Civ. P. 12(b)(1), but case should have been dismissed for inmate's failure to exhaust administrative remedies); *Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997) (deciding constitutional challenge to the PLRA on interlocutory appeal); *but see Jordan v. Coffman*, No. 4:21-CV-1456-MTS, 2023 U.S. Dist. LEXIS 64594, 2023 WL 2930338, at *3–6 (E.D. Mo. Apr. 13, 2023) (denying interlocutory appeal where Defendants had asserted that district court order conflicted with Eighth Circuit precedent).

1. Controlling Question of Law

An issue is a controlling question of law if reversal of the district court's order would terminate the action, or is "quite likely" to influence the course of the litigation. *Nat'l Union Fire Ins. Co. of Pittsburgh v. Donaldson Co.*, No. 10-cv-4948 (JRT/TNL), 2015 U.S. Dist. LEXIS 107661, 2015 WL 4898662, at *2 (D. Minn. Aug. 17, 2015)

(quoting *Century Pac., Inc. v. Hilton Hotels Corp.*, 574 F. Supp. 2d 369, 372 (S.D.N.Y. 2008), and *Sokaogon Gaming Enter. Corp. v. Tushie-Montgomery Assocs. Inc.*, 86 F.3d 656, 659 (7th Cir. 1996)).

The Court finds that the issue addressed in the June 29, 2023 Order involves a controlling question of law: whether the amendment of a complaint—a complaint originally brought by plaintiff before he was released from prison, but amended after his release from prison to add new defendants, newly identified to plaintiff for the first time, and the only remaining defendants in this case, creates a new "operative complaint" for purposes of determining the applicability of the exhaustion requirements of the PLRA? Summary judgment in Defendants' favor would result in dismissal of the action. *Watkins, Inc. v. McCormick & Co., Inc.*, 579 F. Supp. 3d 1118, 1121 (D. Minn. 2022) (holding that an appeal concerns a controlling question of law if answering said question warrants reversal of a final judgment or dismissal).

2. Substantial Ground for Difference of Opinion

Substantial ground for disagreement may be supported by the identification of a "sufficient number of conflicting and contradictory opinions." *White*, 43 F.3d at 378 (internal citation omitted). "[S]ubstantial ground for difference of opinion does not exist merely because there is a dearth of cases." *Id.* (internal citation omitted). Such grounds may exist if "a difference of opinion exists within the controlling circuit" or "the circuits are split on

the question." *Graham v. Hubbs Mach. & Mfg. Inc.*, 49 F. Supp. 3d 600, 612 (E.D. Mo. 2014). However, the existence of a circuit split does not necessarily create sufficient grounds for disagreement. *See Babbitt v. Target Corp.*, Civil No. 20-490 (DWF/ECW), 2023 U.S. Dist. LEXIS 43980, 2023 WL 2540450, at *4 (D. Minn. Mar. 16, 2023) (holding that where the Fifth Circuit's rule was rejected by many courts within and outside the Eighth Circuit, even without binding Eighth Circuit precedent, there was no substantial ground for disagreement).

While the Court stands by its summary judgment ruling, it finds that Defendants meet this requirement for an interlocutory appeal. There is no binding Eighth Circuit precedent on this issue, but there is a circuit split on this question, which continues to evolve in light of the Supreme Court's holding in *Jones v. Bock*, 549 U.S. 199, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007). The Second, Fifth, Seventh, Tenth, and Eleventh Circuits have "concluded that the relevant time when determining the applicability of the PLRA is the date when the lawsuit was filed." *Jefferson v. Roy*, No. 16-cv-3137 (WMW/SER), 2019 U.S. Dist. LEXIS 145080, 2019 WL 4013960, at *2 (D. Minn. Aug. 26, 2019) (collecting cases), *but see Sanchez v. Nassau County*, --- F.Supp.3d ----, 2023 U.S. Dist. LEXIS 41194, 2023 WL 2457855, at *12-19 (E.D.N.Y. Mar. 11, 2023) (challenging Second Circuit's reasoning and limiting applicability of prior precedent, *Berry v. Kerik*, 366 F.3d 85 (2d Cir. 2004), to situations where the plaintiff is still actually incarcerated). Conversely, the Ninth Circuit has held that an amended complaint which adds new

parties is a supplemental complaint which supersedes earlier complaints, thus rendering earlier filing dates irrelevant and obviating a defense based on the exhaustion requirement. *See Jackson v. Fong*, 870 F.3d 928, 932-37 (9th Cir. 2017). The Third Circuit agrees with the holding of *Jackson*. *See Garrett v. Wexford Health*, 938 F.3d 69, 88-92 (3d Cir. 2019). The Sixth Circuit's position on this issue is somewhat ambiguous, with the circuit challenging the reasoning of, but not expressly overturning, a holding which sided with the Second, Fifth, Seventh, Tenth and Eleventh Circuits. *See Mattox v. Edelman*, 851 F.3d 583, 592-95 (6th Cir. 2017) (discussing *Cox v. Mayer*, 332 F.3d 422 (6th Cir. 2002)).

There is also a split within the District of Minnesota. *Compare Jefferson*, 2019 U.S. Dist. LEXIS 145080, 2019 WL 4013960, at *2-3 (holding that "consistent with the weight of the prevailing legal authority addressed above, the date of Jefferson's amended complaint has no bearing on the applicability of the PLRA's exhaustion requirement."), *with Scher v. Bureau of Prisons*, No. 19-cv-2001 (SRN/BRT), 2021 U.S. Dist. LEXIS 218667, 2021 WL 3426050, at *3 (D. Minn. May 27, 2021) (citing *Jackson*, 870 F3d at 937).

3. Materially Advance Termination of the Litigation

As to whether allowing an interlocutory appeal would materially advance the termination of this litigation, the Court finds this factor is also met. As noted earlier, because Defendants are the only remaining Defendants

in the case, resolving the question of exhaustion could potentially terminate the case.

In sum, although the Court maintains that its summary judgment ruling was correct, it finds that Defendants meet the three requirements for interlocutory appeal, and Plaintiff does not oppose the motion. Accordingly, Defendants' motion is granted.

III. CONCLUSION

Based on the submissions and the entire file and proceedings herein, and for the reasons stated on the record at the hearing, **IT IS HEREBY ORDERED** that

1. Defendants' Motion to Amend Order of June 29, 2023 to Certify for Appeal [Doc. No. 93] is **GRANTED**.

2. The hearing on this motion, scheduled for November 29, 2023, is **CANCELED**.

3. The Court hereby **AMENDS** it June 29, 2023 Order [Doc. No. 87] to certify the following question under 28 U.S.C. § 1292(b):

> Whether the amendment of a complaint—a complaint originally brought by plaintiff before he was released from prison, but amended after his release from prison—to add new defendants, newly identified to plaintiff for the first time, and the only remaining defendants in

this case, creates a new "operative complaint" for purposes of determining the applicability of the exhaustion requirements of the PLRA?

Dated: November 17, 2023 /s/ Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FILED JUNE 29, 2023

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

Case No. 21-cv-02689 (SRN/ECW)

JEREMY JAMES ALLEN,

Plaintiff,

v.

CHERYL PIEPHO, CHARLES BROOKS, EACH IN THEIR INDIVIDUAL CAPACITIES, AND THE MINNESOTA DEPARTMENT OF CORRECTIONS,

Defendants.

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

SUSAN RICHARD NELSON, United States District Judge.

This matter is before the Court on the Motion for Summary Judgment filed by Defendants Cheryl Piepho and Charles Brooks ("Piepho and Brooks"). Based on a review of the files, submissions, and proceedings herein, and for the reasons below, the Court denies Defendants' Motion for Summary Judgment.

Appendix D

I. BACKGROUND

Defendants brought this Motion for Summary Judgment on the narrow issue of whether Mr. Allen's claims are barred by the Prison Litigation Reform Act ("PLRA") for failure to exhaust his administrative remedies before bringing the action. (*See* Defs.' Mem. in Supp. of Mot. for Summ. J. ("Defs.' Mem."), [Doc. No. 81], at 1-2.) It is undisputed that Mr. Allen was incarcerated from July 26, 2017 through April 18, 2022, and did not file any grievances during his incarceration. (Grunseth Decl. [Doc. No. 76] ¶¶ 10-12; *see also* Pl.'s Mem. in Opp'n ("Opp'n"), [Doc. No. 82], at 5 ("Plaintiff does not dispute that he did not exhaust his administrative remedies.").)

Mr. Allen's original Complaint was a state court action in Ramsey County District Court, dated November 10, 2021. (Notice of Removal [Doc. No. 1], Ex. A (Compl.) at 15.) The original Complaint named as Defendants: Paul Schnell, Minnesota Commissioner of Corrections, in his official capacity; James Amsterdam, Medical Director of the MN DOC, in his individual and official capacity; Edward Shaman, M.D., Alyas Masih, M.D.,[1] and Gene Kliber, P.A., each in their individual and official capacities; John and Jane Does A—F, each in their individual and official capacities as members of the nursing and medical staff of MN DOC facility, Faribault, MN; and Centurion of Minnesota, LLC. (*Id.* at 1.) Defendants Shaman, Masih, Kliber, and Centurion waived service of summons of

1. Dr. Masih was incorrectly identified as Dr. Mashih in the initial Complaint, which was corrected in the Notice of Removal. (Notice of Removal at 1 n1.)

the Complaint on November 30, 2021 (*id.* at 16-23) and removed the lawsuit to federal court on December 17, 2021, considering Mr. Allen's federal claims brought pursuant to 42 U.S.C. § 1983. (Notice of Removal.) Service of the Complaint was waived by the State on December 13, 2021. [Doc. No. 8.] In accordance with the parties' joint stipulation, the Court dismissed without prejudice Defendants Amsterdam and Schnell on January 11, 2022. [Doc. No. 13.]

On January 26, 2022, Mr. Allen served a subpoena on the State to produce information regarding the identities of individuals whose signatures were found in Mr. Allen's DOC medical records. (Moccio Decl. [Doc. No. 83], Ex. 1.) The State identified Cheryl Piepho and Charles Brooks on March 31, 2022. (Moccio Decl., Ex. 3 at 1.) Mr. Allen was released from incarceration on April 22, 2022. (Grunseth Decl, Ex. C.) On April 29, 2022, the Court granted Mr. Allen leave to amend his complaint, and he filed it the next day. [Doc. Nos. 20-21.] The Amended Complaint names as Defendants: Dr. Shaman, Dr. Masih, Mr. Kliber, Rita Iverson, Cheryl Piepho, Charles Brooks, and Mr. Schnell, each in their individual capacities, the MN DOC, and Centurion. (Am. Compl. [Doc. No. 21], at 1.) The Amended Complaint was served on the State via waiver of service on May 4, 2022. [Doc. No. 24.]

The Defendants brought a Motion to Dismiss for lack of jurisdiction on June 30, 2022. [Doc. No. 27.] Mr. Allen voluntarily agreed to dismiss Count II against Defendants Piepho and Brooks, Count III against Commissioner Schnell, and Count IV against the MN DOC. (Pl.'s Opp'n

to Mot. to Dismiss [Doc. No. 38], at 1.) After the parties completed briefing and pursuant to their stipulation, the Court dismissed with prejudice Defendants Shaman, Masih, Kliber, Iverson, and Centurion. [Doc. Nos. 49, 54.] The Court denied Defendants' Motion to Dismiss on the remaining § 1983 claims as to Piepho and Brooks. (Order [Doc. No. 61], at 19.)

Defendants were granted permission to move for summary judgment before the close of discovery to decide whether Mr. Allen's claims must be dismissed because he did not exhaust the available administrative remedies before filing suit. [Doc Nos. 67-68.] On June 22, 2023, the Court heard oral argument and ruled from the bench at the hearing in the interest of time and efficiency, as the parties were awaiting a ruling on this issue prior to beginning discovery. [Doc. No. 86.] The Court explained its reasoning on the record, which is incorporated herein by reference, and this Order is intended to memorialize that ruling.

II. DISCUSSION

Defendants argue that Mr. Allen's claims are barred because he was a prisoner when he brought this action and did not exhaust his administrative remedies as required by the PLRA. (Defs.' Mem. at 6-12.)

The PLRA provides that "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, 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 PLRA's exhaustion requirement applies only to individuals who are incarcerated or detained, not those who bring federal claims after being released from incarceration. *Nerness v. Johnson*, 401 F.3d 874, 876 (8th Cir. 2005).

A. Operative Complaint

Defendants contend that Mr. Allen brought this action on December 13, 2021, when two Department of Corrections ("DOC") defendants waived service of a summons on his state court Complaint.[2] (Defs.' Mem. at 9.) Mr. Allen was incarcerated at that time and did not file any grievances. (Grunseth Decl. ¶¶ 10-12; *see also* Opp'n at 5.) Accordingly, Defendants argue that Mr. Allen's claims must be dismissed. (Defs.' Mem. at 14.) Mr. Allen counters that he "brought" this action against the only remaining Defendants, Piepho and Brooks, no earlier than April 30, 2022, when they were named for the first time with the filing of the Amended Complaint — after his release from incarceration. (Opp'n at 6.)

Whether amending a complaint after release from incarceration creates a new "operative complaint" for determination of the exhaustion requirement under the PLRA has no clear precedent from the Eighth Circuit. However, the "usual practice under the Federal Rules" of Civil Procedure should be followed, unless a deviation

2. Actions filed in Minnesota state court commence upon service of the summons or the date that waiver of service is signed. Minn. R. Civ. P. 3.01.

from the Rules is specified by the PLRA itself. *See Jones v. Bock*, 549 U.S. 199, 212-14, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007). "Exhaustion requirements apply based on when a plaintiff files the operative complaint, in accordance with the Federal Rules of Civil Procedure." *Jackson v. Fong*, 870 F.3d 928, 935 (9th Cir. 2017). Accordingly, "[i]n PLRA cases, amended pleadings may supersede earlier pleadings." *Id.* at 934.

The Court is persuaded that where the Defendants were first named in the case in the Amended Complaint, after Plaintiff's release from incarceration, the Amended Complaint should be considered the operative complaint to determine the exhaustion requirement under the PLRA. This ruling is supported both by the usual practice of determining an operative complaint under the Federal Rules of Civil Procedure and an assessment of the facts of this case — Mr. Allen could not reasonably be expected to have filed grievances against Piehpo and Brooks when he did not know their identities, or what they had done. Since the Amended Complaint was "brought" after Plaintiff's release from incarceration, he was not required by the PLRA to exhaust his administrative remedies.

B. Relation Back Doctrine

Defendants also argue that the Amended Complaint relates back to the original Complaint, so Mr. Allen is subject to the PLRA's exhaustion requirement. (Defs.' Reply Mem. [Doc. No. 85], at 12-16.) Relation of the Amended Complaint back to the original Complaint is governed by Fed. R. Civ. P. 15. *See Jones*, 549 U.S. at 212-

14 (applying "the usual practice under the Federal Rules" where departure from the usual procedural practice is not "specified by the PLRA itself.")

"Under Rule 15(c), relation back is permitted only when the action originally is brought against the wrong person because of a 'mistake.'" *Heglund v. Aitkin Cnty.*, 871 F.3d 572, 581 (8th Cir. 2017). Using "John Doe" or "Jane Doe" in an initial complaint, and then amending it to include named defendants once their identities are known, is not "mistake" that allows for relation back under Rule 15. *See Heglund*, 871 F.3d at 572 ("the Heglunds did not make a 'mistake' in the ordinary sense of the word when they intentionally sued 'John Doe' while knowing that he was not the proper defendant."). *See also Loeffler v. City of Anoka*, No. 13-CV-2060 (MJD/TNL), 2017 U.S. Dist. LEXIS 4951, 2017 WL 123424, at *1 (D. Minn. Jan. 12, 2017), *aff'd*, 893 F.3d 1082 (8th Cir. 2018) ("many recent decisions from this District have held that when a plaintiff substitutes a Doe defendant for a named defendant, the amendment does not relate back under Rule 15(c)(1)(C)(ii).").

Accordingly, the Court finds that the PLRA exhaustion requirement does not apply to Mr. Allen's claims against Piepho and Brooks, because he was not incarcerated when they were first named as Defendants in the case, and the Amended Complaint does not relate back to the initial Complaint.

III. CONCLUSION

Based on the submissions and the entire file and proceedings herein, and for the reasons stated on the record at the hearing, **IT IS HEREBY ORDERED** that Defendants' Motion for Summary Judgment [Doc. No. 72] is **DENIED**.

IT IS SO ORDERED.

Dated: Thursday,
June 29, 2023

/s/ *Susan Richard Nelson*
SUSAN RICHARD NELSON
United States District Judge

APPENDIX E — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, DATED MAY 22, 2025

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 23-3658

JEREMY JAMES ALLEN,

Appellee,

v.

DR. JAMES AMSTERDAM, MEDICAL DIRECTOR, MN DOC, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY, *et al.,*

CHARLES BROOKS, IN THEIR INDIVIDUAL CAPACITY,

Appellant,

RITA IVERSON, IN THEIR INDIVIDUAL CAPACITY,

CHERYL PIEPHO, IN THEIR INDIVIDUAL CAPACITY,

Appellant,

Appendix E

MINNESOTA DEPARTMENT OF CORRECTIONS AND PAUL SCHNELL, IN THEIR INDIVIDUAL CAPACITY.

Appeal from U.S. District Court for the District of Minnesota (0:21-cv-02689-SRN)

ORDER

The petition for rehearing en banc is denied. The petition for panel rehearing is also denied.

Judge Loken, Judge Shepherd, Judge Stras, and Judge Kobes would grant the petition for rehearing en banc.

May 22, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler