No. 25-350

In the Supreme Court of the United States

CHARLES BROOKS, ET AL.,

Petitioners,

v.

JEREMY JAMES ALLEN,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Using the boilerplate phrase "[n]o action shall be brought," the Prison Litigation Reform Act of 1995 (or PLRA) requires prisoner-litigants to exhaust all available administrative (prison) remedies. 42 U.S.C. §1997e(a). In *Jones v. Bock*, 549 U.S. 199 (2007), this Court held that the PLRA's exhaustion rule carries the same meaning as other affirmative defenses that use the same boilerplate (like statutes of limitations). *Id.* at 220. This reading means that absent express PLRA text to the contrary, the PLRA abides by the Federal Rules of Civil Procedure. *Id.* at 212.

Federal Rule of Civil Procedure 15 governs the amendment of actions and application of the relation back doctrine. Every precedential circuit decision to apply *Jones* in the context of an amended complaint has found that Rule 15 applies, making it possible in some cases for an amended complaint to obviate a PLRA exhaustion defense to an original complaint. The Court, in turn, has denied review of this multi-circuit consensus. *Wexford Health v. Garrett*, 140 S. Ct. 1611 (2020). The Court has also reaffirmed *Jones*. *See Perttu v. Richards*, 605 U.S. 460, 469–70 (2025). The Court has even observed in dicta that a PLRA exhaustion defense to an "original" complaint may be "arguably cured" by a plaintiff's "subsequent filings." *Ramirez v. Collier*, 595 U.S. 411, 423 (2022).

As a result, the question presented is whether Rule 15 governs the effect of amended complaints for purposes of PLRA exhaustion—a question on which no genuine circuit split exists (i.e., post-*Jones*) and on which no decision of this Court casts any doubt.

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INTRODUCTION

In 2020, prison staff petitioned for review of whether the Prison Litigation Reform Act (or PLRA) allows an amended complaint to overcome a failure-to-exhaust defense to a prisoner's original complaint. Cert. Pet. i, 9, *Wexford Health v. Garrett*, No. 19-867 (U.S. Jan. 8, 2020). This question rested on a mirage. The *Wexford* petitioners conjured a circuit split based on decisions that were non-precedential, inapposite, or issued before *Jones v. Bock*, 549 U.S. 199 (2007)—this Court's seminal precedent on PLRA exhaustion. BIO 22–27, *Wexford*, No. 19-867 (U.S. Mar. 11, 2020). Circuit precedents applying *Jones* in actual cases of amended complaints all concurred: PLRA exhaustion abides Federal Rule of Civil Procedure 15. *Id.* And under Rule 15's regulation of amended pleadings and 'relation back,' an amended complaint may in some cases moot a PLRA exhaustion defense. *Id.*

Petitioners in this case (prison staff) raise the same question as the *Wexford* petitioners. But the Eighth Circuit decision below only reaffirms the still undivided view of the circuits that PLRA exhaustion (as defined by *Jones*) abides Rule 15. *See* Pet. App. 6a–7a. And following the decision below, this Court has expressly reaffirmed *Jones*'s pivotal holding: "PLRA exhaustion is … subject to 'the usual practice under the Federal Rules ….'" *Perttu v. Richards,* 605 U.S. 460, 468 (2025). Intervening Court dicta after the *Wexford* petition further establishes that a PLRA exhaustion defense to an "original" complaint may be "arguably cured" by a prisoner's "subsequent filings," including the submission of "an amended complaint." *Ramirez v. Collier*, 595 U.S. 411, 423 (2022).

So Petitioners are stuck conjuring the same circuit-split mirage as the *Wexford* petitioners while stressing the policy importance of PLRA exhaustion. Pet. 8–13. In the words of Yogi Berra, "it's déjà vu all over again." And compared to *Wexford*, this case is an even worse vehicle for deciding Rule 15's relationship to PLRA exhaustion. Petitioners neglect the judicial estoppel problem raised by their earlier successful advocacy that the amended complaint here (not the original) dictates when suit against Petitioners was "brought." Petitioners also neglect this case's lack of finality. Litigation is ongoing and Petitioners remain able to prevail in several other ways that would moot the need to review the question presented.

Finally, at bottom, Petitioners seek adoption of a rule that makes no practical difference as a matter of their own stated goal of vindicating exhaustion. According to Petitioners, inmates with pending suits who are released may not amend their suits to add unexhausted claims. But Petitioners concede PLRA exhaustion applies only to current prisoners. So all inmates need to do to file suit on unexhausted (but still timely) claims is wait until after their release to sue—or after release, dismiss without prejudice their original filed-in-jail actions and file new complaints. Petitioners' advocacy is nothing more tha a bid for a more inefficient approach to prisoner litigation.

In sum: the Court made the right call five years ago when it denied the *Wexford* petition. Nothing has changed since then to merit a different result here. If anything, review has become even less tenable given this Court's intervening PLRA and Federal Rules jurisprudence, which bolsters the decision below.

STATEMENT OF THE CASE

A. Legal Overview

1. The Prison Litigation Reform Act of 1995 (PLRA) provides with respect to "a prisoner confined in any jail, prison, or other correctional facility" that: "[n]o action shall be brought with respect to prison conditions under [42 U.S.C.] [§]1983 … or any other [f]ederal law … until such administrative remedies as are available are exhausted." Pub. L. No. 104–134, tit. VIII, §803(d), 110 Stat. 1321, 1321–71 (codified at 42 U.S.C. §1997e(a)). By definition, this exhaustion rule applies only to persons who are "incarcerated or detained" (i.e., current prisoners). 110 Stat. 1321–72 ("Definition") (codified at 42 U.S.C. §1997e(h)).

The circuits uniformly agree on this, and it is not disputed here:[1] a "plaintiff who seeks to bring suit about prison life after he has been released … does not have to satisfy the PLRA's exhaustion requirements before bringing suit." *Norton v. City of Marietta*, 432 F.3d 1145, 1150 (10th Cir. 2005); *see also Nerness v. Johnson*, 401 F.3d 874, 876 (8th Cir. 2005). So PLRA exhaustion does not apply to the prisoner who (for example) suffers an injury his last week in jail and decides to postpone suing until after his release. No PLRA text requires prisoners to file suits during their incarceration or in a manner that assures PLRA exhaustion will apply. *See Bargher v. White*, 928 F.3d 439, 448–49 (5th Cir. 2019).

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[1] *See* Defs. SJ Mem. 6, *Allen v. Piepho*, No. 21-cv-2689 (D. Minn. May 12, 2023) (ECF 81) ("Th[e] exhaustion requirement applies only to individuals who are incarcerated or detained, not those who bring federal claims after being released ….").

2. In the decade following the PLRA's passage, various circuits determined the mandatory phrasing of PLRA exhaustion displaced normal civil litigation standards, including the Federal Rules. For example, singling out the word "action" in "no action shall be brought," the Sixth Circuit held the "plain language" of PLRA exhaustion fixed a "total exhaustion rule": "complete dismissal … [when] a prisoner's complaint … alleges both exhausted and unexhausted claims." *Jones Bey v. Johnson*, 407 F.3d 801, 805–07 (6th Cir. 2005). This rule barred adherence to usual practices, instead requiring prisoners to file all new complaints that stated only unexhausted claims. *Id.; see Baxter v. Rose*, 305 F.3d 486, 488–90 (6th Cir. 2002).

The Eleventh Circuit took a similar approach. Singling out the word "brought" in "no action shall be brought," the Eleventh Circuit held that the "plain language" of PLRA exhaustion mandated "a prisoner must exhaust … *before* filing suit"—"amendment or supplement" under the Federal Rules was "beside the point." *Harris v. Garner*, 216 F.3d 970, 974, 981 (11th Cir. 2000) (en banc) (italics in original). On this view, the PLRA required dismissal of prisoner suits filed in jail that lacked exhaustion even though such dismissal would be "without prejudice to re-filing … when the plaintiff is released" (at which point, PLRA exhaustion would not apply). *Id.* at 980. As far the Eleventh Circuit was concerned, the PLRA afforded no room for amendment to "make any difference" in prisoner suits because the PLRA said "no action shall be brought." *See id.* at 983. The Eleventh Circuit also stressed "[a]t the risk of being repetitive" that its view was equally justified by the PLRA's "purpose": "to stem … prisoner lawsuits." *Id.* at 972, 983.

3. In 2007, the Court decided *Jones v. Bock*, 549 U.S. 199 (2007)—a unanimous decision on the proper application of PLRA exhaustion. The Court held that numerous circuits had "exceed[ed] the proper limits on the judicial role" through their innovation of strict hurdles that PLRA exhaustion did "not require[]." *Id.* at 202. These innovated hurdles included the Sixth Circuit's "'total exhaustion' rule." *Id.* at 206.

The Court acknowledged the Sixth Circuit's rule had a textual basis: "no action shall be brought." *Id.* at 221. Noting the "many" federal statutes that use the same words—especially "statutes of limitations"—the Court recognized these words were "boilerplate language." *Id.* at 220. And upon close examination of statutes of limitations and other provisions featuring the same boilerplate, the Court found zero support for a total-exhaustion rule: "we have never heard of an entire complaint being thrown out simply because one of several discrete claims was barred by the statute of limitations …." *Id.* at 220–21. So the Court found that the PLRA's use of "no action shall be brought" abided the "general rule": when a complaint has "both good and bad claims," the court "proceeds with the good and leaves the bad." *Id.* at 221.

Through this analysis, the Court underscored its general holding in *Jones* that the PLRA does not hide procedural elephants in linguistic mouseholes. "[W]hen Congress meant [in the PLRA] to depart from the usual procedural requirements, [Congress] did so expressly." *Id.* at 216. For example, the PLRA states that defendants "may waive the right to reply" and this waiver "shall not constitute an admission." 42 U.S.C. §1997e(g)(1). This text expressly departs from

the Federal Rules, which generally presume that allegations are "admitted if … not denied." Fed. R. Civ. P. 8(b)(6). Based on this example and others, the Court determined in *Jones* that when the PLRA lacks comparable text on a given procedural matter, such "silen[ce]" is "strong evidence that the usual practice should be followed." 549 U.S. at 212.

The Court buttressed this holding with a stern warning: "courts should generally not depart from …the Federal Rules on the basis of perceived policy concerns." *Id.* PLRA exhaustion was no exception. The Court recognized "exhaustion was a 'centerpiece' of the PLRA" and "the PLRA dealt extensively with exhaustion." *Id.* at 212, 214. But these realities just confirmed that absent "departures specified by the PLRA," PLRA exhaustion abides "usual procedural practice." *Id.* at 214. The Court emphasized that any other determination risked judicial rewriting of the PLRA—or a complete subversion of "the process of amending the Federal Rules." *Id.* at 216–17.

4. Following *Jones*, the circuits began work "harmoniz[ing] the PLRA with the … Federal Rules … as the Supreme Court has instructed." *Rhodes v. Robinson*, 621 F.3d 1002, 1007 (9th Cir. 2010). In 2017, the Ninth Circuit held PLRA exhaustion turns on "when a plaintiff files the operative complaint, in accordance with the Federal Rules [i.e., Rule 15]." *Jackson v. Fong*, 870 F.3d 928, 935 (9th Cir. 2017). A supplemental prisoner complaint filed post-release named new defendants (doctors). *See id.* at 932–34. On these facts (which precluded relation back), the Ninth Circuit held this "operative complaint" was not subject to PLRA exhaustion. *See id.* at 931.

In 2019, the Tenth Circuit likewise concluded Rule 15 governs the effect of amended complaints for purposes of PLRA exhaustion. *See May v. Segovia*, 929 F.3d 1223, 1227–29 (10th Cir. 2019). Reciting *Jones's* mandate that "courts should generally not depart from … the Federal Rules," the Tenth Circuit observed that when "the conditions of Rule 15(c) are met," amended complaints "relate[] back to the date of the original." *Id.* at 1228–29. As a result, Rule 15(c) rendered a second amended complaint (SAC) filed by a prisoner after his release subject to PLRA exhaustion. *See id.* The SAC met Rule 15(c), relating the SAC back to an original complaint filed in jail when PLRA exhaustion applied. *See id.* The SAC "supersede[d] the original complaint's *allegations* but not its *timing*." *Id.* at 1229 (italics in original).

Later in 2019, the Third Circuit agreed with the Ninth and Tenth Circuits that Rule 15 governs the effect of amended complaints for purposes of PLRA exhaustion. *See Garrett v. Wexford Health*, 938 F.3d 69 (3d Cir. 2019). The Third Circuit saw "nothing" in PLRA exhaustion—including its boilerplate language—that would displace Rule 15's "usual operation." *Id.* at 90. Third Circuit law, in turn, deemed Rule 15 to have the following usual operation: "a complaint that relates back can cure an untimely initial complaint." *T Mobile Ne. LLC v. City of Wilmington, Del.,* 913 F.3d 311, 328 (3d Cir. 2019). The prisoner in *Wexford* filed his original complaint while in jail and without exhausting available remedies. 938 F.3d at 84. After his release, the prisoner filed an amended complaint that met Rule 15's conditions for relation back. *Id.* The Third Circuit concluded the prisoner's amended complaint "cure[d] the original filing defect." *Id.*

5. The Third Circuit's decision in *Wexford* drew a certiorari petition. *See* Cert. Pet., *Wexford Health v. Garrett*, No. 19-867 (U.S. Jan. 8, 2020). The *Wexford* petitioners asserted a circuit split on whether the PLRA allows an amended complaint to overcome a failure-to-exhaust defense to a prisoner's original complaint. *Id.* at i, 9. The *Wexford* petitioners argued the Third Circuit's affirmative answer on this point conflicted with Fifth Circuit (*Bargher*), Sixth Circuit (*Cox*), and Eleventh Circuit (*Harris*) cases answering 'no.' *Id.* at 10–16. But *Harris* and *Cox* preceded this Court's seminal decision in *Jones*, while *Bargher* did not involve any amended complaint. *See* BIO 22–27, *Wexford*, No. 19-867 (U.S. Mar. 11, 2020). The Court denied review. *Wexford Health v. Garrett*, 140 S. Ct. 1611 (2020). Justice Thomas dissented, finding the Third Circuit gave *Jones*'s discussion of boilerplate "more [credit] than it is worth." *Id.* at 1612.

6. Post-*Wexford*, the Court decided cases that afforded further insight on PLRA exhaustion and the Federal Rules. As detailed below, each case bolstered the uniform, post-*Jones* view among the circuits that the Federal Rules governed the effect of amended complaints for purposes of PLRA exhaustion:

In 2022, the Court decided *Ramirez* v. *Collier*, 595 U.S. 411 (2022). Prisoner John Ramirez sought a religious accommodation related to his forthcoming execution. *See id.* at 416. Prison officials argued that PLRA exhaustion barred Ramirez's lawsuit. *See id.* at 421–23. "[Ramirez] filed suit before [Texas] prison officials ruled on [Ramirez's] Step 2 grievance"—a grievance that "prison officials did not decide …until six days after Ramirez sued." *Id.* at 422–23.

The Court found this failure-to-exhaust did not matter since "Ramirez filed an amended complaint th[e] same day" that exhaustion finally occurred and "a second amended complaint after that." *Id.* at 423. The Court found these "subsequent filings" "arguably cured" the "original [lack-of-exhaustion] defect." *Id.* The Court pointed to a Ninth Circuit decision that explained PLRA exhaustion abided the "general rule" that an "amended complaint supercedes the original, the latter being treated thereafter as non-existent." *Id.* (quoting *Rhodes*, 621 F.3d at 1005). The Court noted, however, that it "need not definitively resolve the issue" since it was not raised below. *Id.*

In 2023, the Court decided *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419 (2023). *Polansky* raised the question of what standard courts should apply in evaluating opposed government motions to dismiss suits under the False Claims Act (FCA). *Id.* at 435. The Court held that the Federal Rules furnished the proper standard. *Id.* The Court's logic was simple: "[t]he Federal Rules are the default rules in civil litigation." *Id.* at 436. The Court was not free to "lightly infer" that the FCA displaced the Federal Rules—especially since "[a]s a practical matter, the Federal Rules appl[ied] in FCA litigation … every day." *Id.* The Court then had "no reason" to innovate "an exception for … dismissals." *Id.*

In 2025, the Court decided *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025). At issue was whether civil plaintiffs may upset removals of their lawsuits from state court to federal court by filing amended complaints that eliminate the legal basis for removal. *Id.* at 25. The Court determined "usual

procedural principle[s]" allowed exactly this outcome. *Id.* at 35. Under these principles, "[t]he plaintiff is the master of the complaint": "[i]f a plaintiff amends her complaint, the new pleading supersedes the old one" and "[t]he original pleading no longer performs any function." *Id.* Put another way, "[t]he amended complaint becomes the operative one"—and that fact may reconfigure litigation as the amended complaint takes "the place of what has come before." *Id.*

7. Five months after *Royal Canin*, the Court decided *Perttu v. Richards*, 605 U.S. 460 (2025). This case gave the Court a chance to revisit its seminal analysis of PLRA exhaustion in *Jones*. A Michigan prisoner asserted "a right to a jury trial on PLRA exhaustion when that dispute is intertwined with the merits of the underlying suit." *Id.* at 464. The Court found "as a matter of statutory interpretation" that the PLRA maintained this right. *Id.* at 468.

In this regard, the Court fully reaffirmed *Jones*. The Court echoed *Jones's* view that the mandatory phrasing of PLRA exhaustion—"[n]o action shall be brought"—is "boilerplate." *Id.* at 470. The Court next observed this boilerplate appeared in other defenses that "routinely [went] to the jury," like "statutes of limitations." *Id.* Nothing about the words "[n]o action shall be brought" then controlled "whether judges or juries should resolve factual disputes related to exhaustion." *Id.* This text instead showed the PLRA was "silent on the issue"—"strong evidence that the usual practice should be followed." *Id.* So, "[j]ust like in *Jones,*" *id.,* the Court found: "PLRA exhaustion is subject to … 'the usual practice under the Federal Rules'" (here, a jury-trial right). *Id.* at 468.

B. Facts & Procedural Background

1. Jeremy Allen was a prisoner at Minnesota Correctional Facility—Faribault ("MCF-Faribault") in Rice County, MN for over four years, from July 26, 2017 through April 18, 2022. *See* Pet. 34a. Allen was released from jail on April 22, 2022. Pet. 35a.

2. During his time in jail, on December 3, 2017, Allen fell out of his bunk.[2] Allen suffered a serious injury to his right hand—two fractured metacarpals (palm bones)—for which Allen sought medical help.[3] Prison officials took Allen to a local hospital where Dr. Bryan Armitage diagnosed Allen's injury, applied "a posterior splint," and told Allen to return within "two or three days for further care."[4] Allen returned two days later, but pain and swelling prevented application of a cast or any further treatment.[5] Dr. Armitage specifically instructed that Allen return in two weeks (i.e., no later than December 20, 2017) for treatment and possible surgical intervention.[6]

But Allen never received this follow-up care. Prison officials failed to return Allen to a doctor until January 23, 2018—five weeks beyond the date that Dr. Armitage prescribed.[7] Prison officials meanwhile remained aware of Allen's ongoing time-sensitive need for treatment. The Minnesota Department of

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[2] Am. Compl. ¶¶5, 12, *Allen v. Piepho*, No. 21-cv-2689 (D. Minn. Apr. 30 2022) (ECF 21).

[3] *See id.* ¶¶12–16.

[4] *See id.* ¶¶12–16.

[5] *Id.* ¶15.

[6] *Id.*

[7] *Id.* ¶16.

Corrections (MNDOC) hired for-profit Centurion to provide medical treatment to MNDOC prisoners.[8] The same day that Dr. Armitage treated Allen for the first time, MNDOC medical provider Cheryl Piepho advised Centurion of Allen's "urgent" need for follow-up care.[9] And after Dr. Armitage directed that Allen needed to return in two weeks for possible surgery, Piepho noted Armitage's prescription as did Charles Brooks, another MNDOC medical provider.[10]

Centurion personnel recognized the failure of prison officials to afford the follow-up care that Allen needed. On December 26, 2017, Centurion employee Rita Iverson allegedly told Piepho in Allen's case: "Orth[opedic] consult submitted as Urgent. Changed to Priority."[11] Two months later, in February 2018, Centurion physician assistant Gene Kliber added the following note: "[Allen] was due … [for a] follow up …. That [medical] appointment did not happen."[12] Kliber further noted that "it was a full month before" Allen received the necessary follow-up care.[13]

When prison officials finally returned Allen to Dr. Armitage on January 23, 2018, surgery was no longer an option because of the improper way Allen's injury healed in the interim.[14] Dr. Armitage ordered physical therapy, but the damage was done.[15] Allen

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8 Am. Compl. ¶10, *Allen*, D. Minn. No. 21-cv-2689 (ECF 21).
9 *Id.* ¶¶7, 19.
10 *Id.* ¶¶8, 20, 21.
11 *Id.* ¶¶11, 22.
12 *Id.* ¶¶11, 26.
13 *Id.* ¶26.
14 *Id.* ¶17.
15 *Id.*

suffered intense physical and psychological trauma as he waited for prison officials to afford the urgent follow-up care that his broken hand required.[16] In the months and years to come, Allen suffered more disabilities and symptoms, including—as confirmed by MNDOC medical notations—a "loss of function," "decreased grip," and "decreased flexion range."[17] In the end, prison officials left Allen with a permanently disfigured hand, forever compromising Allen's future ability to obtain work and earn stable wages.[18]

3. On November 10, 2021, while still in prison, Allen (through counsel) filed a lawsuit in Minnesota state court over his disfigured hand.[19] Allen asserted prison officials and staff were deliberately indifferent to his serious medical needs, violating his Eighth and Fourteenth Amendment rights (as made actionable by 42 U.S.C. §1983).[20] Allen also pressed a medical malpractice claim under Minnesota law.[21]

Allen sued MNDOC, the head of MNDOC (Paul Schnell), and the chief medical director of MNDOC (Dr. James Amsterdam).[22] Allen also sued Centurion and the Centurion personnel who were involved in his care, including Kliber and two Centurion doctors (Edward Shaman and Alyas Masih).[23] Finally, Allen sued John and Jane Does A–F (Does)—placeholders

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16 Am. Compl. ¶17, *Allen*, D. Minn. No. 21-cv-2689 (ECF 21).
17 *Id.* ¶¶28, 29.
18 *Id.* ¶30.
19 Compl. (attached to Removal Notice), *Allen v. Piepho*, No. 21-cv-2689 (D. Minn. Dec. 17, 2021) (ECF 1-1).
20 *See id.* ¶¶34–39, 46–55.
21 *See id.* ¶¶40–45. 56–58.
22 *See id.* ¶¶6, 7.
23 *See id.* ¶¶8–10; *see also* Pet. 34a n.1.

for any other prison medical providers liable to Allen but presently unknown to him.[24] MNDOC used paper records to document Allen's care, and these records bore a number of illegible handwritten signatures, including those of Piepho and Brooks. Pet. 35a.

4. In December 2021, the Centurion defendants removed Allen's lawsuit to federal district court in Minnesota.[25] Still in prison, Allen agreed to dismiss-without-prejudice the head of MNDOC (Schnell) and MNDOC's chief medical director (Amsterdam). Pet. 35a. Allen then subpoenaed MNDOC to identify the jail personnel whose illegible signatures appeared in Allen's MNDOC medical records. *Id.* On March 31, 2022, MNDOC named Piepho and Brooks. *Id.*

5. On April 30, 2022—a month after MNDOC's disclosure and a week after Allen's release from jail — Allen filed an amended complaint with the district court's permission.[26] Allen replaced the placeholder Doe defendants with MNDOC employees Piepho and Brooks and Centurion employee Iverson.[27] Allen also restored MNDOC's head (Schnell) as a defendant.[28] Piepho, Brooks, and Schnell then waived service of the Amended Complaint on May 2, 2022.[29]

6. Between September and October 2022, Allen agreed to dismiss with prejudice his claims against Centurion and the individual Centurion personnel

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24 Compl. ¶5, D. Minn. No. 21-cv-2689 (ECF 1-1).
25 Notice, D. Minn. No. 21-cv-2689 (ECF 1).
26 Order, D. Minn. No. 21-cv-2689 (ECF 20).
27 Am. Compl. ¶¶7, 8, 11, D. Minn. No. 21-cv-2689 (ECF 21).
28 *Id.* ¶9.
29 MTD Mem., D. Minn. No. 21-cv-2689 (ECF 30).

named as defendants in his amended complaint (i.e., Dr. Shaman, Dr. Alyas, Kliber, and Iverson).[30]

7. On June 30, 2022, the MNDOC defendants moved to dismiss Allen's amended complaint.[31] The MNDOC defendants presented several grounds for dismissal, one of which was a statute-of-limitations defense. Allen's medical malpractice claims under Minnesota law fell under a 4-year limitations period, unlike the longer 6-year limitations period governing Allen's federal constitutional claims. *See* Minn. Stat. §541.076(b) ("An action by a patient … alleging malpractice … must be commenced within four years ...."); *see also United States v. Bailey*, 700 F.3d 1149, 1153 (8th Cir. 2012) ("[L]imitations on claims under 42 U.S.C. §1983 … is six years in Minnesota.").

The MNDOC defendants argued that the 4-year limitations period barred Allen's medical malpractice claims against Piepho and Brooks.[32] Finding these malpractice claims accrued no later than January 23, 2018 (when doctors found no cure was possible), the MNDOC defendants argued Allen "did not commence a lawsuit against Piepho and Brooks until more than four years later, on May 2, 2022."[33] So on the pivotal

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[30] *See* Order on Stip., D. Minn. No. 21-cv-2689 (ECF 49) (dismissing Centurion personnel); Order on Stip. D. Minn. No. 21-cv-2689 (ECF 54) (dismissing Centurion).

[31] Waiver of Service, D. Minn. No. 21-cv-2689 (ECF 24).

[32] MTD Mem. 13–14, D. Minn. No. 21-cv-2689 (ECF 30).

[33] *Id.* at 13. The MNDOC defendants cited the May 2, 2022 waiver-of-service date—rather than the amended complaint's April 30, 2022 filing date—because suit commencement under Minnesota rules turns on waiver rather than filing. See Defs. SJ Mem. 9 n.4, D. Minn. No. 21-cv-2689 (ECF 81). The MNDOC

question of when Allen brought suit against Piepho and Brooks, the MNDOC defendants made clear their position that the operative complaint was the amended complaint—*not* the original complaint. And the MNDOC defendants cemented this position by stressing that: "[Allen's] original [c]omplaint asserted no [legal] claims against Piepho and Brooks."[34]

The MNDOC defendants also took the position that Piepho and Brooks were entitled to the benefit of the Federal Rules in terms of amended complaints and relation-back doctrine. The MNDOC defendants observed that under Rule 15—as explained by the Eighth Circuit in *Heglund v. Aitkin County*, 871 F.3d 572 (8th Cir. 2017)—"when an amended complaint replaces a Doe defendant with the name of an actual defendant, it does not relate back to the original complaint for statute of limitations purposes."[35] The MNDOC defendants urged the district court to hold: "[a]ny … assert[ion] that the [a]mended [c]omplaint [here] relates back to the initial [c]omplaint with respect to Piepho and Brooks … [is] futile."[36]

Confronted with these arguments, Allen agreed to dismiss his medical malpractice claims against Piepho and Brooks.[37] Allen also agreed to dismiss all remaining claims against MNDOC and the head of

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defendants insisted Minnesota rules "should apply" since "this action was initiated in state court before removal." *Id.*

34 MTD Mem. 13, D. Minn. No. 21-cv-2689 (ECF 30).

35 MTD Mem. 13–14, D. Minn. No. 21-cv-2689 (ECF 30).

36 *Id.*

37 MTD Opp. Mem. 1, D. Minn. No. 21-cv-2689 (ECF 38) ("[Allen] will voluntarily dismiss Count II (medical malpractice) against Defendants Piepho and Brooks.").

MNDOC (Schnell).[38] The district court accepted both dismissals and entered them with prejudice.[39]

At the same time, the district court allowed Allen's §1983 claims to proceed against Piepho and Brooks, rejecting a qualified immunity defense.[40] The MNDOC defendants based this defense in significant part on Piepho's and Brooks's "job functions."[41] But these "facts" were "not part of the pleadings."[42] Given this reality, the district court "decline[d] to dismiss" at this time "in the absence of a full record."[43]

8. On May 11, 2023, Piepho and Brooks—now the only remaining defendants—moved for summary judgment on the sole ground of PLRA exhaustion.[44] Piepho and Brooks noted PLRA exhaustion "[does] not [apply to] those who bring federal claims after being released."[45] Piepho and Brooks then forgot their own successful motion-to-dismiss position that Allen "did not commence a lawsuit against Piepho and Brooks until … May 2, 2022"[46]—i.e., after Allen's release from jail on April 22, 2022. Pet. 35a.

Piepho and Brooks now took the opposite view, classifying Allen's original complaint as the operative one: "Allen commenced this lawsuit on December 13,

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38 MTD Opp. Mem. 1, D. Minn. No. 21-cv-2689 (ECF 38) ("Plaintiff will voluntarily dismiss … Schnell and … DOC.").

39 MTD Order at 19, D. Minn. No. 21-cv-2689 (ECF 61).

40 *See id.*

41 *Id.* at 15.

42 *Id.*

43 *Id.*

44 Defs. First SJ Mot., D. Minn. No. 21-cv-2689 (ECF 81).

45 *Id.* at 6.

46 MTD Mem. 13, D. Minn. No. 21-cv-2689 (ECF 30).

2021, when two [MN]DOC defendants waived service of a summons on [Allen's] state court complaint."[47] PLRA exhaustion then barred this filed-in-jail, non-exhausted complaint.[48] Piepho and Brooks separately insisted that Allen's amended complaint related back to any exhaustion defect in his original one—another view contradicting their motion-to-dismiss.[49]

The district court rejected Piepho and Brooks's PLRA exhaustion argument. Pet. 36a–40a. Rule 15 remained effective under the PLRA, and no relation back occurred through Allen's replacement of the Doe placeholders with Piepho and Brooks. *Id.*

9. On interlocutory review under 28 U.S.C. §1292(b), the Eighth Circuit affirmed. Pet. 2a–9a. The PLRA did not depart from Rule 15—and under Rule 15, the conditions of relation back were not met. *Id.* Judge Loken dissented. Pet. 10a–20a. The Eighth Circuit denied rehearing, with four judges stating they would have granted rehearing. Pet. 42a.

10. On September 19, 2025, Piepho and Brooks petitioned for Supreme Court review. Meanwhile, the parties remain in active litigation (i.e., no appellate stay has been entered). Discovery is ongoing and the state has expressed its intention to file a dispositive motion in the near future. Finally, the district court has scheduled this case for trial next year.

11. This brief-in-opposition follows.

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47 Defs. First SJ Mot. 9, D. Minn. No. 21-cv-2689 (ECF 81).

48 *See id.* at 6–14.

49 Defs. SJ Reply 12–16, D. Minn. No. 21-cv-2689 (ECF 85).

REASONS TO DENY THE PETITION

I. The Eighth Circuit properly interpreted the PLRA's text as dictated by this Court's decisions in *Jones* and now *Perttu*.

In this case, the Eighth Circuit determined that: "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." Pet. 6a. The typical rules in question established: (1) Allen's amended complaint was the operative complaint; and (2) Allen's amended complaint did not relate back to the date of Allen's original complaint because the amended complaint did not satisfy Federal Rule of Civil Procedure 15's mandates for relation-back. Pet. 6a–8a. The Eighth Circuit thus concluded PLRA exhaustion "did not" apply here because "[when] Allen filed his amended complaint, he was no longer an inmate." *Id.*

Petitioners argue the Eighth Circuit is wrong: "the text of the PLRA makes plaintiff's confinement status at the beginning of the lawsuit dispositive of the exhaustion issue." Pet.14. In other words, PLRA exhaustion looks only and forever at a prisoner's original complaint. But Petitioners' support for this notion consists entirely of outdated or out-of-context citations and circular logic. By contrast, the Eighth Circuit's recognition that PLRA exhaustion is silent on amendment and relation-back—requiring typical rules to be applied—tracks this Court's view of PLRA exhaustion in *Jones v. Bock*, 549 U.S. 199 (2007) and now *Perttu v. Richards*, 605 U.S. 460 (2025).

Start with *Jones*. Looking at the statutory text of PLRA exhaustion—"no action shall be brought" the Sixth Circuit saw a "'total exhaustion' rule." 549 U.S. at 205–06. This Court reversed. *Id.* at 219–24. The Court explained "no action shall be brought" is "boilerplate language" that exists in "many" federal laws, particularly "statutes of limitations." *Id.* at 220 ("Statutes of limitations … are often introduced by a variant of the phrase 'no action shall be brought' …."). So the Court reviewed statutes of limitations to see whether "total exhaustion" was the rule. *Id.* After all, "**boilerplate is boilerplate for a reason**—because it offers tried-and-true language to ensure a precise and predictable result." *Seila Law LLC v. CFPB*, 591 U.S. 197, 235 (2020) (bold added).

The Court's examination in *Jones* of statutes of limitations yielded no evidence of a total-exhaustion rule. 549 U.S. at 220. The Court explained: "we have never heard of an entire complaint being thrown out simply because one of several discrete claims was barred by the statute of limitations." *Id.* The words "no action shall be brought" in the PLRA then stood "silent on the issue"—"strong evidence that the usual practice should be followed." *Id.* at 212. "As a general matter, if a complaint contains both good and bad claims, the court proceeds with the good and leaves the bad." *Id.* at 221. The Court ruled that PLRA exhaustion abided this practice: "[i]f Congress meant to depart from this [general] norm, we would expect some indication of that, and we find none." *Id.*

Now consider *Perttu*. At issue was whether "a right to a jury trial on PLRA exhaustion [existed] when that issue is intertwined with the merits of a

claim that falls under the Seventh Amendment." 605 U.S. at 468. The Court applied the same methodology it used in *Jones*, while quoting and citing *Jones* every step of the way. *Id.* at 469–70. The Court declared: "[a]s we noted in *Jones*, the phrase '[n]o action shall be brought' is 'boilerplate language' often used for … statutes of limitations …." *Id.* The Court's review of statutes of limitations revealed these "affirmative defenses … routinely go to the jury." *Id.* "Just like in *Jones*, then," the Court found "statutory silence"—"strong evidence that the usual practice should be followed." *Id.* And the usual practice "in cases of intertwinement," was an "order[ing] of operations" to "preserve the jury trial right." *Id.* at 471.

In this case, the Eighth Circuit had to decide whether PLRA exhaustion respects or displaces the usual practices governing amended complaints and the relation-back doctrine. Pet. 2a–3a; 5a–8a. Under the *Jones/Perttu* methodology, the wording of PLRA exhaustion ("no action shall be brought") carries the same effect as statutes of limitations. The "general rule … in applying [a] statute of limitations" is that "reference must be had to the time [an] amended complaint is filed" when certain conditions exist (e.g., an amendment brings in "a new and independent right of action"). *Oolitic Stone Co. v. Ridge,* 91 N.E. 944, 949 (Ind. 1910). Indeed, relation-back would not exist but for statutes of limitations abiding the tenet that an amended pleading "'supersedes' the old one." *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025). The purpose of relation-back is to address the timeliness of amended complaints. *See* FRCP 15(c) 1966 Adv. Cmte. Note ("relation back is intimately connected with … statute[s] of limitations").

The Eighth Circuit thus correctly recognized that "the PLRA is silent" about amended complaints and relation back, just as the PLRA is silent about total exhaustion and jury trials. And Petitioners do not dispute that: (1) when the PLRA is silent, usual practices apply; and (2) presuming the PLRA is silent here, the Eighth Circuit correctly applied the usual practice on amendments and relation back (Federal Rule 15). Petitioners argue only that the PLRA "is not truly silent" here because the PLRA's use of the word "brought"—in the phrase "no action shall be *brought*"—"unambiguously refers to the beginning of a case" (i.e., the original complaint). Pet.13.

Petitioners cite *Harris v. Garner*, 216 F.3d 970, 974, 981 (11th Cir. 2000) (en banc), which echoes Petitioners' thinking that "[i]t is confinement status at the time the [prisoner's] lawsuit is 'brought,' i.e., filed, that matters." *Id.* at 975. But *Harris* precedes this Court's definitive holding in *Jones* and again in *Perttu* that the phrase "no action shall be brought" must be read as a whole—not by reading each word (like "brought" or "action") in isolation. *Perttu*, 605 U.S. at 468–70; *Jones*, 549 U.S. at 219–24. And when read as a whole, this "boilerplate language" requires a review of statutes of limitations (and other laws featuring the same boilerplate) to gauge meaning. Petitioners meanwhile do not mention "boilerplate" even once in their analysis, much less maintain that statutes of limitations accord with Petitioners' view of "brought." Pet. 13–14. Petitioners' citation of *Stites v. Mahoney,* 594 F. App'x 303, 304–05 (7th Cir. 2015) shares this problem, leaving aside the fact that *Stites* (a pro se appeal) entails a 'drive by' reading of PLRA exhaustion that never once considers *Jones*.

Petitioners cite *May v. Segovia*, 929 F.3d 1223, (10th Cir. 2019)—a PLRA exhaustion case in which the Tenth Circuit notes "[t]he amended complaint, as the operative complaint, supersedes the original complaint's *allegations* but not its *timing*." *See id.* at 1229 (italics in original). Petitioners omit the context surrounding this observation: a discussion of what happens "when a complaint is properly amended and the [relation-back] conditions of Rule 15(c) are met." *Id. May* cuts against Petitioners, showing that PLRA exhaustion looks at original complaints only to the extent Rule 15 says so; the PLRA's use of the word "brought" does not by itself elicit this result.

So Petitioners pivot to extolling why exhaustion "makes sense." Pet.14. Petitioners whistle past the senseless consequences of their PLRA interpretation. For example, under Petitioners' view, if an action is "brought" (i.e., begun) without exhaustion, the PLRA mandates dismissal even if exhaustion later occurs. *See Ramirez v. Collier*, 595 U.S. 411, 422–23 (2022) ("[P]rison officials did not decide th[e] grievance until six days after Ramirez sued."). Petitioners' total-dismissal argument denies any possibility that "[an] original [exhaustion] defect" may be "cured" by later filings, *id.,* because exhaustion hinges on the word "brought," making "[the complaint] at the beginning of the lawsuit dispositive of the exhaustion issue." Pet.14. So if a prisoner files suit and later exhausts, Petitioners' total-dismissal argument mandates that the prisoner's original action must be dismissed and the prisoner must file a new, post-exhaustion suit—a multiplication of paperwork that "[does] not comport" with any notion of trying to "reduce the quantity of inmate [litigation]." *Jones,* 549 U.S. at 223.

Petitioner stresses the word "brought," implying the word itself settles that an action is "brought" when—and only when—a plaintiff files his original complaint. Pet. 13–14. This circular logic collapses upon proper consideration of the history of pleading. This history teaches that for affirmative defenses like exhaustion and statutes of limitations, "the word 'commenced' is sometimes used, and at other times the word 'brought'" and "the two words … mean the same thing." *Goldenberg v. Murphy*, 108 U.S. 162, 163, (1883). This history also teaches that "[u]ntil [given] defendants [are] made parties to the bill, the suit cannot be considered as having been commenced against them." *Miller's Heirs v. M'Intyre*, 31 U.S. 61, 64 (1832). The decision below then stands in perfect harmony with the word "brought": an action was not "brought" against Petitioners until Allen's amended complaint, which coming after Allen's release made PLRA exhaustion inapplicable. Pet.6a–8a.

Petitioners' own advocacy confirms this point. Besides his §1983 claims, Allen sued Petitioners for medical malpractice. By statute, such claims "must be commenced within four years" of accrual. Minn. Stat. §541.076(b). Petitioners did not read the word "commenced" (equal to "brought") to make Allen's original complaint dispositive of the statute's rule. Petitioners instead maintained that Allen's amended complaint was dispositive because Allen "did not commence a lawsuit" against Petitioners until the amended complaint.[50] No reason then exists to grant review of an argument over the word "brought" that Petitioners themselves do not fully believe.

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[50] MTD Mem. 13–14, D. Minn. No. 21-cv-2689 (ECF 30).

II. There is no circuit split—only a strawman contrived by ignoring *Jones* and *Perttu*.

Petitioners maintain that the circuits "are split" on PLRA exhaustion "with respect to inmates who begin their lawsuits while incarcerated but amend their complaints to add unexhausted claims after they are released." Pet.9. In 2020, the Court heard the same claim in *Wexford Health v. Garrett*, No. 19-867 (U.S. Jan. 8, 2020) (cert. pet.). The Court denied review following effective brief-in-opposition analysis showing no circuit split exists. BIO 22–27, *Wexford*, No. 19-867 (U.S. Mar. 11, 2020); *see also Wexford Health v. Garrett*, 140 S. Ct. 1611 (2020).

It is now five years later. One might expect that anyone seeking review of the same issue urged by the *Wexford* petitioners would come to the Court with fresh intervening citations showing the circuits are indeed split on this issue. Petitioners do the opposite: they rehash the exact same circuit decisions that the *Wexford* BIO successfully tackled and call it a day. *Compare* Pet.8–11 *with Wexford* BIO 22–27. Worse still, Petitioners ignore this Court's pivotal decisions in *Jones* and now *Perttu,* which dispose of any effort to prove a circuit split through cases predating these binding precedents on PLRA exhaustion.

Petitioners contend "[a] majority of the circuits" agree that PLRA exhaustion turns on a prisoner's original complaint, displacing usual practices under Federal Rule 15 governing amendment and relation-back. *See* Pet.9. Petitioners cite Fifth, Sixth, Seventh, Tenth, and Eleventh Circuit decisions that fall into the following three categories. *See* Pet. 8–10.

The **first category** is circuit cases that predate *Jones*. The Eleventh Circuit falls into this category with *Harris v. Garner*, 216 F.3d 970, 974, 981 (11th Cir. 2000) (en banc). So does the Sixth Circuit with *Cox v. Mayer*, 332 F.3d 422 (6th Cir. 2003). Viewing these cases as evidence of a circuit split is a problem because these "circuits might well decide these cases differently today." *Jackson v. Fong,* 870 F.3d 928, 935 n.3 (9th Cir. 2017). *Harris* and *Cox* deem PLRA exhaustion to displace usual practices (like Rule 15) without the benefit of *Jones's* later decisive command —now reinforced by *Perttu*—that "PLRA exhaustion is … subject to the usual practice under the Federal Rules." *Perttu*, 605 U.S. at 469 (cleaned up).

Harris and *Cox* suffer other defects that belie their capacity to generate a circuit split. *Harris* did not involve an amended complaint: "[n]o motion to amend the complaint was filed …." 261 F.3d at 981 n.10. The *Harris* majority opinion saw fit to "assume" an amendment "for purposes of discussion." *Id.* But as the Eleventh Circuit has later said (in a decision by author of the *Harris* opinion, no less): "regardless of what a court says in its opinion, the decision can hold nothing beyond the facts of that case." *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010). *Cox* presents the same defect: "[the] plaintiff made no … motion" to file an amended complaint. 332 F.3d at 428. Later Sixth Circuit panels have thus declared that "[t]he *Cox* panel's dicta do not bind us." *Mattox v. Edelman*, 851 F.3d 583, 593 (6th Cir. 2017).

The **second category** is circuit cases decided after *Jones* that set no precedent and ignore *Jones*. The Seventh Circuit falls into this category with *Stites*

v. Mahoney, 594 F. App'x 303 (7th Cir. 2015)—a non-precedential order enforcing PLRA exhaustion without consideration of *Jones*. *See id.* at 303–04. *Stites* has "no legal status outside the parties or the case in which it was decided." *United States v. Harris*, 124 F.4th 1088, 1092 (7th Cir. 2025) ("Just because a decision can be found on Westlaw does not mean it has precedential effect in our circuit.").

The second category also covers *Smith v. Terry*, 491 F. App'x 81 (11th Cir. 2012). A non-precedential Eleventh Circuit decision, *Smith* invokes the circuit's pre-*Jones* view of PLRA exhaustion (*Harris*) without mentioning *Jones*. *See Smith,* 49 F. App'x at 82–84. *Smith* also does this hypothetically. *Id.* Because the record "fail[ed] to establish whether the district court ever permitted … amend[ment]," *Smith* "assume[s]—without deciding—that [the plaintiff] was permitted to amend." *Id.* at 83. The result is more *Harris* and *Cox*-style dicta. *See Edwards*, 602 F.3d at 1298.

The **third category** is post-*Jones* circuit cases that Petitioners misread as supportive of their view, when the opposite is true or the case is inapposite. The Tenth Circuit fits this bill with *May v. Segovia*, 929 F.3d 1223 (10th Cir. 2019). Far from embracing Petitioners' view that PLRA exhaustion displaces the usual practice under Federal Rule 15 on amendment and relation-back, *May* goes into great detail on how PLRA exhaustion works *within* (not outside) Rule 15. *See id.* at 1228–31. *May* also cabins its force through its identification of briefing failures and alternative grounds to affirm. *Id.* at 1231–34. *May* does not then prove a circuit split now any more than it did five years ago in *Wexford*. *See Wexford* BIO 26–27.

The same goes for the Fifth Circuit and *Bargher v. White*, 928 F.3d 439 (5th Cir. 2019). This decision fails to prove any circuit split for the simple reason that the *Bargher* plaintiff "never filed a post-release amended or supplemental complaint." *Wexford* BIO 25. Hence, *Bargher* lacks any discussion of Federal Rule 15 or usual practices related to amendment and relation-back. 28 F.3d at 446–48. While the *Bargher* plaintiff continued to litigate his filed-in-jail lawsuit after his release, the sole complaint on file did not reflect or incorporate plaintiff's release. 928 F.3d at 447. All *Bargher* then does is apply PLRA exhaustion in line with a case's operative complaint. *Id.*

With the preceding three categories in mind, Petitioners fail to identify any precedential circuit decision that applies *Jones/Perttu* and concludes—opposite to the Eighth Circuit below—that the PLRA displaces usual practices related to amendments and relation-back. Just the opposite: Petitioners concede that the Third Circuit and Ninth Circuit agree with the Eighth Circuit. Pet.10–11. The Tenth Circuit's decision in *May* also agrees with the Eighth Circuit, with both circuits aligning their application of PLRA exhaustion with Federal Rule 15(c). *May* observes that when "the conditions of Rule 15(c) are met," an amended complaint will "relate back" to the "timing" of an original complaint and, by extension, any lack of PLRA exhaustion. 929 F.3d at 1229. The Eighth Circuit's decision here builds on this analysis, noting the flip side: when Rule 15(c) is not met, an amended complaint "does not relate back," which may then make PLRA exhaustion inapplicable. Pet.8a.

No circuit split thus exists in this case.

III. This case is an even poorer vehicle for the question presented than the 2020 *Wexford* petition (which the Court denied).

Petitioners argue this case is an "ideal vehicle" to decide the question presented since a decision for Petitioners would end the litigation and because "no factual disputes" exist that would cloud the question. Pet.15, In reality, two major vehicle problems make this case an even worse candidate for review than the *Wexford* petition that the Court denied five years ago. These vehicle problems are as follows:

1. ***Judicial estoppel***. Petitioners obtained a vital advantage in the district court by arguing the exact opposite of the position they now advance here. Minnesota law dictates that "[a]n action … alleging [medical] malpractice … must be commenced" within a 4-year period. Minn. Stat. §541.076. Invoking this rule, Petitioners had to answer the general question of when they believed Allen "commenced" (brought) his "action." Petitioners elected to answer that Allen "did not commence a lawsuit against [them]" until the amended complaint (which Allen filed after his release from jail).[51] Petitioners stressed that Allen's "original complaint asserted no claims" against them and that it was "futile" to assert that "the amended complaint relate[d] back."[52] Allen thereafter agreed to dismiss his medical malpractice claims against Petitioners[53]—a dismissal that the district court both accepted and then entered with prejudice.[54]

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51 MTD Mem. 13, D. Minn. No. 21-cv-2689 (ECF 30).

52 *Id.* at 13–14 (cleaned up).

53 MTD Opp. Mem. 1, D. Minn. No. 21-cv-2689 (ECF 38).

54 MTD Order at 19, D. Minn. No. 21-cv-2689 (ECF 61).

Now, to obtain the benefit of PLRA exhaustion from this Court, Petitioners take the opposite view: Allen "brought" (commenced) his "action" as of his original complaint. Pet. 10 ("timing … determined by … the original complaint"). But if that is true, Allen's medical malpractice claims are timely and merit revival. The doctrine of judicial estoppel then permits Allen to seek this outcome—or to argue Petitioners cannot prevail on their PLRA exhaustion argument (no matter the argument's merits) given Petitioners' previous advocacy that Allen's amended, post-release complaint establishes when Allen's action began. The doctrine "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). The doctrine' manifest applicability here then poses a problem many times greater than the judicial waiver problem that pervaded *Wexford*. *See Wexford* BIO 28 (detailing history of waived arguments).

2. ***Interlocutory review.*** This case comes to the Court not on a case-ending final judgment, but as the result of interlocutory review under 28 U.S.C. §1292(b). Pet. 23a–32a. Litigation is ongoing, and Petitioners have raised other significant arguments on which Petitioners might succeed (e.g., qualified immunity) and thereby moot any further need on their part for judicial review of PLRA exhaustion. The Court has previously recognized that a lack of finality in proceedings is a "fact" that "itself alone furnish[es] sufficient ground" for a denial of review. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916). This case falls well within that principle and merits robust application of it.

IV. Petitioners' sky-is-falling policy arguments lack merit while eliding Petitioners' effort to upset stable, even-handed rules.

Petitioners insist that the decision below allows "an 'end-run' around PLRA exhaustion" that "risk[s] … 'opening the floodgates.'" *See* Pet.11. If that were true, such a flood (i.e., hundreds or dozens of cases) should have occurred by now. Application of PLRA exhaustion consistent with Federal Rule 15 has been the law for nearly a decade in the Ninth Circuit and half-a-decade in the Third Circuit. Petitioners fail to identify any flood of prisoner cases turning on Rule 15 in these circuits—only a few cases that Petitioners deem objectionable. *See* Pet.11–12. Petitioners' sky-is-falling argument then reduces to a bare preference against "encourag[ing] prisoners to file unexhausted claims as their release date approaches." *Id.*

To avoid this problem, Petitioners insist upon a reading of PLRA exhaustion that requires dismissal of prisoner actions lacking exhaustion at the time of the original complaint even if: (1) exhaustion later occurs; or (2) the prisoner may "immediately refile" and, due to release, PLRA exhaustion will not apply to the new action. *Bargher*, 928 F.3d at 447–48. All this policy does is generate bureaucracy. Instead of being able to rely on the usual, efficient practice of amended complaints and relation-back, Petitioners' total-dismissal rule compels refiling an entire suit. Worse still, Petitioners' advocacy returns the PLRA to a byzantine relationship with the Federal Rules, making it harder for everyone to know just when the Rules apply. Nothing in the PLRA requires that result—or warrants review to produce it.

CONCLUSION

The Court should deny review of this case.

Respectfully submitted,

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