No. 25-457

In the Supreme Court of the United States

TOPAZ JOHNSON, *et al.*

Petitioners,

v.

HIGH DESERT STATE PRISON, *et al.*

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The text of 28 U.S.C. § 1915(b)(1) provides that "a prisoner" who "brings a civil action . . . in forma pauperis . . . shall be required to pay the full amount of a filing fee." The question presented is whether Section 1915(b)(1) requires each indigent prisoner to pay the full amount of the filing fee when the prisoner files a joint action with other prisoner-plaintiffs.

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STATEMENT

1. Congress enacted the Prison Litigation Reform Act to "address the large number of prisoner complaints filed in federal court." *Jones v. Bock*, 549 U.S. 199, 202 (2007). In the mid-1990s, Congress noted the "sharp rise in prisoner litigation in the federal courts." *Woodford v. Ngo*, 548 U.S. 81, 84 (2006). "The number of prisoner lawsuits had grown from 6,600 in 1975 to more than 39,000 in 1994, . . . and by 1995, prisoners were responsible for filing more than 25% of the lawsuits in federal court." Pet. App. 6a. Congress thus adopted the PLRA to "bring this litigation under control." *Woodford*, 548 U.S. at 84. The PLRA adopted "a variety of reforms designed to filter out the bad claims and facilitate consideration of the good." *Jones*, 549 U.S. at 204.

One of these reforms is codified at 28 U.S.C. § 1915(b). Before the PLRA, prisoners who could not afford the filing fees required to initiate federal lawsuits were able—like all other civil litigants—to proceed in forma pauperis under Section 1915. *See Neitzke v. Williams*, 490 U.S. 319, 324 (1989). But because indigent prisoners could file lawsuits for free, they "lack[ed] an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Id.* The PLRA therefore changed the rules for prisoners: they can bring federal lawsuits in forma pauperis, but—if they do so—they will eventually be required to "pay the fees that normally accompany the filing" of such litigation. 141 Cong. Rec. S14413-S14414 (daily ed. Sept. 27, 1995) (statement of Sen. Dole). Specifically, the statute now provides that "if a prisoner brings a civil action . . . in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1).

Congress directed how "the full amount" of those filing fees should be collected. Section 1915(b)(1) explains that district courts "shall assess and, when funds exist, collect . . . an initial partial filing fee of 20 percent of the greater of" either "the average monthly deposits to the prisoner's account," or "the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint." Under Section 1915(b)(2), "[a]fter payment of the initial partial filing fee, the prisoner shall be required to make monthly payments" to the district court "of 20 percent of the preceding month's income credited to the prisoner's account," so long as "the amount in the account exceeds $10." These monthly payments must then continue "until the filing fees are paid." 28 U.S.C. § 1915(b)(2).

The PLRA also imposed two other rules concerning the collection of filing fees. First, under Section 1915(b)(3), "[i]n no event shall the filing fee collected" from prisoners proceeding in forma pauperis "exceed the amount of fees permitted by" Section 1914, which establishes a filing fee of $350 for federal lawsuits. Second, Section 1915(b)(4) establishes a "safety-valve provision" to ensure the fee requirements in the PLRA do "not bar access to the courts." *Bruce v. Samuels*, 577 U.S. 82, 86 (2016). Under that provision, "[i]n no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." 28 U.S.C. § 1915(b)(4).

2. Petitioners Topaz Johnson and Ian Henderson were both prisoners in High Desert State Prison in California when they filed a lawsuit in federal court alleging violations of 42 U.S.C. § 1983. They claimed

that certain correctional officers had kept them handcuffed in "dirty, urine smelling" holding cells for more than eight hours, causing them lower back pain, blistering on their feet, and emotional pain. Pet. App. 8a (internal quotation marks omitted). They argued that these conditions of confinement amounted to Eighth Amendment violations and that they were falsely imprisoned under California law. *See id.* In addition to their complaint, petitioners filed a joint application to proceed in forma pauperis under 28 U.S.C. § 1915(b). *See id.*; C.A. E.R. 19-21.

The district court denied petitioners' request for joinder under Federal Rule of Civil Procedure 20, concluding that "each plaintiff must proceed with their own separate lawsuits." Pet. App. 42a. The court explained that Section 1915(b)(1) "expressly requires that a prisoner, where proceeding in forma pauperis, pay the full amount of the filing fee" for a civil action. *Id.* at 43a. But it noted that Section 1915(b)(3) prohibits courts from collecting filing fees from prisoners that "exceed the amount of fees permitted by statute for the commencement of a civil action." *Id.* at 44a. In the district court's view, these two provisions make it impossible for indigent prisoners to file joint lawsuits: "[i]f multiple prisoners were permitted to proceed with a joint action, and each paid the full filing fee in accordance with § 1915(b)(1)," then "the amount of fees collected would" violate Section 1915(b)(3). *Id.*[1]

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[1] The district court separately denied petitioners' joinder request under Rule 20 because their joint claims threatened to present "unique" case-management problems—for example, "transfer of one or more plaintiffs to different institutions or release on parole, as well as the challenges to communication among plaintiffs presented by confinement, may cause delay and confusion" for a joint lawsuit. Pet. App. 42a-43a.

3. The Ninth Circuit reversed. As the court explained, although the district court correctly held that "§ 1915(b)(1) requires prisoners to each pay the full filing fee," the district court erred when it concluded that the PLRA prohibits prisoners from "joining in a lawsuit." Pet. App. 11a. Considering the statute's plain text, context, and overall purposes, the court concluded that there is no tension between Sections 1915(b)(1) and (b)(3). *See id.* at 12a-20a.

The court first recognized that Sections 1915(b)(1) and (b)(2) set up a "'per-litigant approach'" to collecting filing fees: each prisoner must "pay 'the full amount of a filing fee,'" and fees will be collected from each prisoner based on the "individual prisoner's financial circumstances." Pet. App. 13a. The court then reasoned that Section 1915(b)(3) "works in tandem with subsection (b)(4) to serve as a 'safety-valve' for Congress's new fee-collecting scheme," ensuring "that '[i]n no event shall' the filing fee collected from a prisoner through their monthly payments 'exceed the amount of fees permitted by statute,' or that a prisoner be prohibited from bringing a civil action even if 'the prisoner has no assets and no means by which to pay the initial partial filing fee.'" *Id.* at 14a-15a. Looking at the PLRA's scheme as a whole, the court held that Section 1915(b)(1) contemplates collecting the full $350 filing fee from each prisoner, and that the statutory cap on "filing fee[s] collected" in Section 1915(b)(3) "sensibly refers to the filing fee paid by each prisoner under (b)(1)-(2)." *Id.* at 15a.

Judge Graber dissented in relevant part. *See* Pet. App. 31a-37a. She maintained that Section 1915(b)(3) prohibits "a district court from collecting even a penny more than the full amount of the usual fees permitted by statute for the commencement of 'a' civil action."

Id. at 33a. She therefore would have read Section 1915(b)(1) to require the payment of just one $350 filing fee for a joint civil action, which could be divvied-up between petitioners. *See id.* at 31a-35a.

Petitioners filed a petition for rehearing en banc, which the Ninth Circuit denied. *See* C.A. Dkt. 56-1. Notably, petitioners did not ask for rehearing due to any purported conflict of authority among the courts of appeals. *See id.* at 6-19. Instead, they argued only that the panel opinion raised issues of "'exceptional importance'" and was wrongly decided. *Id.* at 2. Although the court denied the petition, Judges Fletcher and Graber wrote separately to express their view that it "makes no sense" to require "that each indigent prisoner . . . pay a $350 filing fee." Pet. App. 63a-64a.

ARGUMENT

Petitioners offer no persuasive reason for this Court to review the Ninth Circuit's interpretation of 28 U.S.C. § 1915(b)(1). The court below correctly construed the statute: under the PLRA's plain text, a prisoner proceeding in forma pauperis "shall be required to pay the full amount of a filing fee," without any exception for prisoners who elect to file joint claims. Every court of appeals that has been presented with—and actually resolved—the meaning of Section 1915(b)(1) has reached that same conclusion. Petitioners' alleged conflict of authority is therefore illusory. And petitioners overstate the practical importance of the question presented: the decision below neither creates "absurd" results under the PLRA (Pet. 18), nor prevents prisoners from bringing their claims in forma pauperis. Instead, the court of appeals' approach provides an administrable means for courts to accomplish Congress' goal of imposing an economic disincentive to meritless prisoner litigation.

1. a. The Ninth Circuit correctly held that prisoners in petitioners' position must each pay a $350 filing fee to bring lawsuits in federal court. Section 1915(b)(1) says, among other things, that "if a prisoner brings a civil action . . . in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." That language is "clear[]": each indigent "prisoner [must] pay the full amount of the filing fees." *Hubbard v. Haley*, 262 F.3d 1194, 1197, 1198 (11th Cir. 2001); *see also Hagan v. Rogers*, 570 F.3d 146, 161 (3rd Cir. 2009) (Jordan, J., concurring in part) (explaining that there would be "nothing 'full' about paying a partial [filing] fee"). Indeed, as Judge Easterbrook has noted, "[i]t is hard to read this language any other way." *Boriboune v. Berge*, 391 F.3d 852, 855 (7th Cir. 2004).

The larger context of the PLRA provides further support for this straightforward understanding. The PLRA contemplates that filing fees will be assessed and collected from *each* indigent prisoner based on *each* prisoner's particular financial circumstances—not based on other facts (such as the number of prisoners that happen to have joined the lawsuit). For example, Section 1915(b)(1) requires the court to "assess" and "collect . . . an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to *the* prisoner's account," or "the average monthly balance in *the* prisoner's account for the 6-month period immediately preceding the filing of the complaint." (Emphasis added). Similarly, Section 1915(b)(2) requires indigent prisoners to make "monthly payments" toward the filing fee "of 20 percent of the preceding month's income credited to *the* prisoner's account." (Emphasis added).

Enforcing Section 1915(b)(1)'s plain text also serves the PLRA's purpose of "containing prisoner litigation." *Bruce*, 577 at 90. Congress has long "recognized . . . that a litigant whose filing fees and court costs are assumed by the public . . . lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Neitzke*, 490 U.S. at 324. It therefore adopted the PLRA to ensure that prisoners "pay the fees that normally accompany the filing of a lawsuit." 141 Cong. Rec. S14413-S14414 (daily ed. Sept. 27, 1995) (statement of Sen. Dole). That purpose strongly favors enforcing Section 1915(b)(1)'s plain text. Requiring each prisoner to "pay the full filing fee" forces them to "'think twice about the case and not just file reflexively.'" *Hubbard*, 262 F.3d at 1197-1198 (quoting 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (statement of Sen. Kyl)).

b. Petitioners argue for a different understanding of Section 1915(b)(1), but the court below correctly rejected each of their arguments. *See* Pet. App. 20a-24a.

Petitioners first contend that indigent prisoners must be allowed to split filing fees because of Sections 1915(b)(3) and 1914, which—in their view—prohibit courts from collecting more than a "single filing fee per civil action." Pet. 18-19. But neither statute supports petitioners' position. Section 1915(b)(3) provides that "[i]n no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action." Read in context, that provision "merely ensures that an IFP prisoner's fees, when paid by installment" under Sections 1915(b)(1) and (b)(2) "will not exceed the standard individual filing fee paid in full." *Hagan*, 570 F.3d at 153, 155. Section 1915(b)(3) is thus consistent with the decision below,

which requires each petitioner to pay the full amount of the $350 filing fee—but no more.

Section 1914 does not change this conclusion. That provision says that courts can generally collect just one filing fee from "the parties instituting any civil action." 28 U.S.C. § 1914(a). But that general rule has no application here, where Congress used different language to enact a different filing-fee scheme for indigent prisoners. Whereas Section 1914(a) contemplates that "the parties" are jointly responsible for a single filing fee, Congress made clear that whenever an indigent prisoner "brings a civil action," "*the prisoner* shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1) (emphasis added). That textual difference matters: courts "are entitled to assume that . . . Congress legislated with care, and that had Congress intended to equate" Section 1914(a) with Section 1915(b)(1), "it would have said so expressly, and not left the matter to mere implication." *Palmore v. United States*, 411 U.S. 389, 395 (1973).

Petitioners downplay this textual difference, claiming that under the Dictionary Act, Section 1915(b)(1) should be read to mean that "'[i]f prisoners' (plural) 'bring a civil action,' 'the prisoners' (again, plural) 'shall be required to pay the full amount of a filing fee.'" Pet. 19. But the Dictionary Act allows courts to assume that certain "'words importing the singular include and apply to several persons, parties, or things,' *unless statutory context indicates otherwise*." *Niz-Chavez v. Garland*, 593 U.S. 155, 164 (2021) (quoting 1 U.S.C. § 1) (emphasis added). Here, context indicates that Congress deliberately adopted a per-prisoner fee requirement, where fees must be assessed based on factors specific to each indigent prisoner—not based on the number of prisoners proceeding

jointly. *See supra* p. 6. Regardless, petitioners' pluralized version of Section 1915(b)(1) does not resolve the question confronted by the court below: "whether [the prisoners] must pay the [full amount of the filing] fee collectively or separately." Pet. App. 20a-21a.[2]

Nor does *Jones*, 549 U.S. at 216, support petitioners' reading of Section 1915(b)(1). *See* Pet. 21-22. In *Jones*, this Court noted that when Congress intended for the PLRA to "depart from the usual" requirements in the Federal Rules of Civil Procedure, it made that departure "express[]." 549 U.S. at 216; *see also id.* at 212. That is just what Congress did. Rather than rely on existing fee-splitting conventions from "other proceedings," it made clear that prisoners who choose to proceed in forma pauperis must "pay the full amount"—not a partial amount—"of a filing fee." 28 U.S.C. § 1915(b)(1). In any event, the *Jones* presumption does no work in this case—not only because petitioners have failed to cite any "usual practice" under the Federal Rules concerning the payment of filing fees, *see* Pet. App. 22a n.9, but also because there is no

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[2] Petitioners also appeal to Section 1915(f), which allows prisoners to split non-filing-fee "costs" after a court has entered final judgment. *See* Pet. 20. But Sections 1915(f) and 1915(b) are materially different. Section 1915(f) provides that "[j]udgment may be rendered for costs at the conclusion of the suit or action *as in other proceedings*." (Emphasis added). Congress chose not to include the "as in other proceedings" language in Section 1915(b); it instead stated that "the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). The court of appeals thus naturally concluded that Congress "did not intend to have IFP filing fees paid as they are in other proceedings." Pet. App. 15a-16a; *see generally Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (describing the Court's "duty to refrain from reading a phrase into the statute when Congress has left it out").

"'usual practice' for litigants proceeding IFP to pay *anything*," *id.* at 22a. The upshot is that "adding subsection (b) to § 1915 did not preserve any practice for indigent litigants at all." *Id.*[3]

2. a. There is no conflict of authority concerning the proper interpretation of Section 1915(b)(1). Instead, every circuit to resolve this issue has come out the same way: indigent prisoners filing joint claims in federal court must each pay "the full amount of a filing fee." 28 U.S.C. § 1915(b)(1); *see* Pet. App. 16a-20a.

The Eleventh Circuit confronted this issue first. In *Hubbard*, 262 F.3d at 1197, the court relied on Section 1915(b)(1)'s plain text to conclude that "each prisoner [must] pay the full filing fee." And it reasoned that this straightforward understanding of the provision's text was most consistent with "the Congressional purpose in promulgating the PLRA," which was to "'deter frivolous inmate lawsuits'" by "'requir[ing] prisoners to pay a very small share of the large burden they place on the federal judicial system.'" *Id.* at 1197-1198 (quoting 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (statement of Sen. Kyl)).[4]

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[3] Petitioners' appeal to *Jones* also fails because they are not seeking a return to any "usual practice" under Section 1914, which allows joint litigants to split the filing fee however they see fit—including by having one litigant pay the entire cost on behalf of all joint plaintiffs. Petitioners instead advocate (*see* Pet. 24-25) for an entirely new practice that would require courts to divide the filing fee equally among prisoner-plaintiffs. Because "[t]he PLRA was intended to ensure that each prisoner pays," Pet. App. 23a n.10, Congress could not have intended for Section 1915(b)(1) to adopt the fee-splitting practices of Section 1914.

[4] Like the district court here, the Eleventh Circuit further concluded that indigent prisoners could never proceed jointly. *Hubbard*, 262 F.3d at 1198. The court below correctly rejected that (continued…)

Other appellate courts soon followed suit. In *Boriboune*, 391 F.3d at 856, the Seventh Circuit reasoned that requiring "per-litigant" payment of the full filing fee was "a natural concomitant to a system that makes permission to proceed *in forma pauperis* (and the amount and timing of payments) contingent on certain person-specific findings," including, for example, "the number of unsuccessful suits or appeals the prisoner has pursued *in forma pauperis* . . . and the balance in the prisoner's trust account." And the Third Circuit considered this same rationale "compelling." *Hagan*, 570 F.3d at 154. It therefore concluded that "taking § 1915(b)(1) at face value, the requirement for each prisoner to pay a full fee is simply one price that a prisoner must pay for IFP status under the PLRA." *Id.* at 155 (internal quotation marks omitted).

District courts in the Second, Fourth, Fifth, Eighth, and Tenth Circuits have followed *Hubbard*, *Boriboune*, and *Hagan*, concluding that indigent prisoners proceeding jointly cannot split the civil-action filing fee.[5] Those courts have explained that requiring each prisoner to pay the full amount of the filing fee is not only the best understanding of the statutory text, but also the best way to avoid imposing unnecessary "administrative burdens" on the courts and "the prisons that administer the disbursement of prisoner funds under § 1915." *Miller v. Annucci*, 2018 WL

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aspect of the *Hubbard* decision. *See* Pet. App. 11a (holding that the PLRA "poses no obstacle to prisoners joining in a lawsuit").

[5] *See, e.g.*, *Taylor v. United States*, 2021 WL 11551663, at *2 (E.D. Ark. June 2, 2021); *Glenewinkel v. Carvajal*, 2020 WL 5513432, at *2 (N.D. Tex. Sept. 14, 2020); *Ofori v. Clarke*, 2019 WL 4344289, at *4 (W.D. Va. Sept. 12, 2019); *Miller v. Annucci*, 2018 WL 10125145, at *3 (S.D.N.Y. Feb. 27, 2018); *Cremer v. Conover*, 2009 WL 3241583, at *1 (D. Kan. Oct. 1, 2009).

10125145, at *4 (S.D.N.Y. Feb. 27, 2018); *see also Boriboune*, 391 F.3d at 855, 856 (highlighting the "difficult" "administrative problems" from "apportion[ing] one fee among multiple prisoners whose litigation histories and trust balances differ").

b. In the face of this substantial "weight of authority," Pet. App. 20a, petitioners rely on three decisions from the Sixth Circuit to allege a conflict among the courts of appeals, *see* Pet. 7-14. But the alleged split does not exist. As district courts in the Sixth Circuit have repeatedly recognized, none of the decisions that petitioners cite amounts to binding authority regarding the question presented. *See Jones v. Fletcher*, 2005 WL 1175960, at *6 n.5 (E.D. Ky. May 5, 2005).[6]

The first case invoked in the petition, *In re Prison Litigation Reform Act*, 105 F.3d 1131 (6th Cir. 1997), was never intended to be precedential. It is an "administrative order" issued by a single jurist, without

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[6] *See also, e.g.*, *Gray v. Crisman*, 2025 WL 2966873, at *2 & n.1 (E.D. Mich. Oct. 20, 2025) (explaining that the Sixth Circuit has merely "suggested" that fees can be divided equally, but noting that district courts do not always follow that practice); *Calhoun v. Washington*, 2021 WL 1387782, at *1 & n.1 (E.D. Mich. Apr. 13, 2021) (same); *McLaurin v. Bagley*, 2017 WL 1738031, at *2 & n.1 (E.D. Mich. May 4, 2017) (same); *Heard v. Snyder*, 2016 WL 5808359, at *1 & n.1 (E.D. Mich. Oct. 5, 2016) (same); *see also McCarren v. Washington*, 2023 WL 7222678, at *1 & n.1 (E.D. Mich. Nov. 2, 2023) (acknowledging the disagreement within the Sixth Circuit, but concluding that it "need not address this issue" because the case was dismissed on other grounds); *Butler v. Pickell*, 2021 WL 3566276, at *3 & n.1 (E.D. Mich. Aug. 12, 2021) (explaining that the "general[]" approach in the Sixth Circuit is to split fees, but noting that this approach "'creates difficult problems,'" and that "[d]istrict courts in the Sixth Circuit" have "called the proportionate share convention into question").

any adversarial briefing or argument, in his "authority as Chief Judge." 105 F.3d at 1131. It was merely designed to provide guidance to district courts "until such time as panels of this court have the opportunity to address the numerous issues raised by the Act." *Id.* In other words, its pronouncements—which were largely unreasoned—are *not* binding. Instead, the order leaves it to future panels to resolve the meaning and application of the PLRA—including "how fees are to be assessed when multiple prisoners constitute the plaintiffs or appellants." *Id.* at 1137.

The opinion in *Talley-Bey v. Knebl*, 168 F.3d 884 (6th Cir. 1999), is even less relevant to the question presented here. That case did not address how courts should assess *filing fees* when prisoners attempt to bring a joint lawsuit in forma pauperis. It instead concerned the distinct question of how to properly apportion *costs* between two prisoner-plaintiffs—a question governed not by Section 1915(b), but by Section 1915(f). *See Jones*, 2005 WL 1175960, at *6 n.5 (citing *Talley-Bey*, and concluding that "[s]o far, the Sixth Circuit has only decided that . . . costs, as opposed to filing fees, may be equally divided among all participating indigent prisoners"). As discussed above, *supra* p. 9 n.2, there are good reasons why a court would read Sections 1915(f) and 1915(b) differently.[7]

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[7] Petitioners note that *Talley-Bey* contains a few stray references to "fees," in addition to "costs." Pet. 8. But the "language of an opinion" is not to be "parsed as though [it] were . . . a statute"; "opinions dispose of concrete cases and controversies and they must be read with a careful eye to context." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-374 (2023) (internal quotation marks omitted). Nothing suggests *Talley-Bey* intended to resolve the Section 1915(b)(1) fees issue. The court did not even quote—let alone analyze—the relevant statutory text.

Berryman v. Freed, 2018 WL 3954209 (6th Cir. Aug. 14, 2018), is similarly inapposite. That unpublished, nonbinding decision concerned a district court order directing a prisoner "to pay the filing fee in its entirety" because the prisoner was unable to proceed jointly with other prisoners. *Id.* at *1. The putative co-plaintiffs' claims were too distinct to be heard in one joint action. *Id.* The Sixth Circuit thus had no occasion to resolve how filing fees should be assessed in cases where—as here—multiple indigent prisoners are proceeding jointly in federal court. Indeed, the court in *Berryman* was careful to note that the Chief Judge's administrative order from *In re Prison Litigation Reform Act* was irrelevant to the panel's analysis. *See id.* (concluding that the administrative "order does not address Berryman's situation"). The bottom line therefore remains that "[n]o panel of the Sixth Circuit has yet squarely addressed the multiple-*in forma pauperis*-prisoner-plaintiff-PLRA filing fee issue" that petitioners raise here. *Jones*, 2005 WL 1175960, at *6.

Of course, there is disagreement "*[w]ithin* the Sixth Circuit" about whether the PLRA "permits apportionment of filing fees in a single case when multiple prisoner-plaintiffs each seek to proceed *in forma pauperis*." *Lawson v. Sizemore*, 2005 WL 1514310, at *1 n.1 (E.D. Ky. June 24, 2005) (emphasis added). As petitioners note, district courts in the Sixth Circuit often allow indigent prisoners to split filing fees. *See* Pet. 9 & n.2. But district courts do not universally follow that practice. For example, in *Jones*, the court concluded that "each separate plaintiff is individually responsible for a full filing fee." 2005 WL 1175960, at *6; *cf. Williams v. ODRC*, 2020 WL 14005678, at *2 (S.D. Ohio Dec. 17, 2020) (citing *Jones* and ordering each plaintiff to pay "the full filing fee"); *Montague v. Schofield*, 2015 WL 1879590, at *4-5 (E.D. Tenn. Apr.

22, 2015) (explaining "that allowing the plaintiffs to proceed upon each plaintiff's payment of a pro rata share of a single filing fee would disserve the purpose behind enactment of the PLRA"). And other district courts have recognized that the Sixth Circuit has not yet issued any binding precedent concerning this fee-splitting issue. *See supra* p. 12 n.6.

Any disagreement or uncertainty within the Sixth Circuit is an issue for that court to resolve—not this Court. There is no reason to believe that the Sixth Circuit is incapable of doing so. *Contra* Pet. 11. As just described, the district courts within the Sixth Circuit do not consider themselves bound by *In re Prisoner Litigation Reform Act*. *See, e.g.*, *Jones*, 2005 WL 1175960, at *6; *Lawson*, 2005 WL 1514310, at *1 n.1. Indigent prisoners bringing a joint lawsuit could therefore each be required to pay the full filing fee and would then be able to appeal that decision—putting the issue squarely in front of a Sixth Circuit panel. *See McCarren v. Washington*, 2023 WL 7222678, at *1 n.1 (E.D. Mich. Nov. 2, 2023).

3. Petitioners also misunderstand the practical consequences of the decision below. They first contend that it would be "bizarre" to adopt a reading of the PLRA whereby "IFP prisoners proceeding jointly" under Section 1915(b) "would have to pay multiples of what non-IFP prisoners must pay" under Section 1914. Pet. 23. But there is nothing unusual about Congress's chosen framework.

As described above, Congress adopted Section 1915(b) to impose "an economic incentive" on prisoners "to refrain from filing frivolous, malicious, or repetitive lawsuits." *Nietzke*, 490 U.S. at 324. Congress thereby ensured that prisoners with joint claims will feel an "economic incentive" regardless of how they

choose to proceed. That is, they can either forgo pauper status and file suit under Section 1914, which would allow them the benefit of splitting the filing fee, but which would impose the substantial "incentive" of a full, upfront filing fee. *See* Pet. App. 22a-23a. Or they can proceed in forma pauperis under Section 1915(b), which would allow them the benefit of making small "monthly payments" toward the filing fee, but with a concomitant cost—each prisoner will be charged "the full amount of [the] filing fee." 28 U.S.C. § 1915(b)(1)-(2).[8] Without this cost, the "economic incentive" against filing frivolous litigation would be diluted—indigent prisoners could join more and more plaintiffs to their lawsuits in an attempt to reduce each prisoner's filing fee. *See, e.g.*, *Bell v. Washington*, 2022 WL 830589, at *1 (E.D. Mich. Mar. 17, 2022) (reasoning that joinder of over 100 plaintiffs may have been intended to "circumvent the filing fee requirements" of Section 1915(b)); *Jackson v. Swab*, 2018 WL 521457, at *3 (W.D. Mich. Jan. 23, 2018) (describing prisoner's history of joining lawsuits "in an apparent attempt to reduce his share of the filing fee").

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[8] Petitioners resist the idea that prisoners have a "choice" about proceeding under Section 1914 or Section 1915(b), because "IFP status is reserved for litigants who *can't* afford to pay the fee upfront." Pet. 23. But that argument misunderstands the nature of a prisoner's options. Prisoners who qualify for pauper status can still choose not to apply for that designation. For example, two indigent prisoners who individually cannot afford to pay the full, upfront filing fee of $350 may nevertheless be able to afford half of that fee and thus may choose to proceed jointly under Section 1914. Or a prisoner with relatively more funds at his disposal could choose to subsidize another prisoner, which would allow both prisoners to forgo proceeding under Section 1915(b).

Petitioners are wrong to view that economic incentive as unduly severe. *See, e.g.*, Pet. 3, 15-16. According to petitioners, requiring prisoners each to pay the full amount of a filing fee could cause them to "forego[] phone calls with family, medical care or sufficient calories." *Id.* at 3; *see also id.* at 14-16. But that overstates the burden imposed by Section 1915(b)(1) in at least two critical respects.

First, prisons are constitutionally obligated to "ensure that inmates receive adequate food, clothing, shelter, and medical care." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). And under California law, petitioners' living expenses are covered by the State—including clothing, shoes, and linens, Cal. Code Regs., tit. 15 § 3030; laundry services, *id.* § 3031; "a wholesome, nutritionally balanced diet," *id.* § 3050; and housing and a bed, *id.* § 3269.1. What's more, California state prisoners (like petitioners) are not charged copayments or other fees in connection with their medical care, *see* Cal. Penal Code § 5007.5 (prohibiting the State from "charg[ing] a fee for an inmate-initiated medical visit"); nor are they charged for phone calls with family members; and they also get limited free video calls with their families, *see* Cal. Dep't of Corr. & Rehab., "Tablets and Telephones," *available at* https://www.cdcr.ca.gov/family-resources/tablets.

Second, the PLRA's method of calculating what each prisoner owes each month does not depend on the amount the district court charges as a filing fee. Here, for example, whether petitioners each owe $350 (as the Ninth Circuit held) or $175 (as petitioners suggest), the amount of money they must pay toward that balance each month will be the same: "20 percent of the preceding month's income," so long as "the amount in the [prisoner's] account exceeds $10." 28 U.S.C.

§ 1915(b)(2). Petitioners' month-to-month choices about how to spend the funds available to them are thus unlikely to change based on this Court's interpretation of Section 1915(b)(1). And while it may take longer for petitioners to pay off a $350 charge than a $175 charge in the abstract, that longer timeline does not always result in materially different financial obligations. That is because prisoners may be released before they finish paying off their fees, and courts have held that indigent prisoners need not continue to make payments under the PLRA once they have been released from prison because "there is no available inmate account from which to deduct payments" under Section 1915(b)(2). *DeBlasio v. Gilmore*, 315 F.3d 396, 398-399 (4th Cir. 2003).

Petitioners also understate the administrative burdens associated with their preferred interpretation of Section 1915(b)(1). *See* Pet. 24-25. They claim that their approach is easy: simply divide the $350 filing fee by the number of indigent prisoners proceeding jointly. *Id.* at 24. But that is too simplistic—as the courts that have tried to apportion fees in this manner have pointed out.

In *Boriboune v. Berge*, for example, the district court explained that adopting an "'equal assessment'" rule would often "directly contradict the requirements of § 1915." 2004 WL 502033, at *5 (W.D. Wisc. Mar. 8, 2004). In a case involving 86 indigent prisoners, the court "calculate[d] an initial partial payment for each petitioner" using the formula required by Section 1915(b)(1)—a formula that requires collecting 20% of the greater of "the average monthly deposits to the prisoner's account" or "the average monthly balance" in the account for the six-month period preceding the filing of the complaint. *Id.* But that approach resulted

in "an amount to be collected that [was] greater than the total of the amount owed for the filing fee." 2004 WL 502033, at *5. In another case involving 11 prisoners, the court determined that the only way to avoid over-collecting fees was to collect initial payments from each prisoner amounting to 4.028% of the average monthly balance in their inmate accounts—not the 20% specifically prescribed by Congress. *Id.* at *5-6. The "administrative hurdle[s]" created by petitioners' approach thus are not imaginary. Pet. 25. They are "substantial." *Boriboune*, 391 F.3d at 854. And the way to avoid them is to "take § 1915(b)(1) at face value," such that each prisoner is responsible for "pay[ing] the full [filing] fee in installments . . . no matter how many other plaintiffs join the complaint." *Id.* at 856.

4. Finally, this case would be a poor vehicle for addressing the question presented because its resolution would not affect the case's outcome. To start, even assuming that indigent prisoners proceeding jointly under Section 1915(b)(1) are allowed to split fees as a general matter, petitioners failed to create a record in this case establishing that they are entitled to pauper status. To proceed in forma pauperis, a prisoner must submit an affidavit indicating that he cannot pay the filing fees *and* "submit a certified copy of the trust fund account statement . . . for the 6-month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(1)-(2). But here, although petitioners (along with their putative co-plaintiff, Kevin Jones Jr.) submitted a joint affidavit to the district court alleging an inability to pay, only Jones filed the required inmate statement report reflecting the balance of his inmate trust account. *See* C.A. E.R. 21; C.A. S.E.R. 7-8. On this record, then, the Court has no way of knowing

whether petitioners would benefit from any decision concerning the meaning of Section 1915(b)(1).

Similarly, it is unclear whether petitioners would even be allowed to proceed jointly under Rule 20 following remand. The district court exercised its discretion to deny petitioners' request for joinder based not only on its interpretation of Section 1915(b), but also due to its concerns about managing a joint case if, for example, the putative co-plaintiffs were transferred to "different institutions" or "release[d] on parole." Pet. App. 42a-43a; *see supra* p. 3 n.1. The court of appeals found this rationale for denying joinder insufficient, because it relied on speculation about future events. *See id.* at 27a. But the court acknowledged that if any of the plaintiffs were actually "transferred or released," the district court could potentially "sever [them] from the lawsuit." *Id.* at 27a. At this point, that "hypothetical[]" has "c[o]me to fruition," *id.*: Jones appears to have been released from prison; and petitioners have been transferred to different state prisons, *see* C.A. Answering Br. 19-20 (noting transfer and describing problems with petitioners' post-transfer filings); Cal. Dep't of Corr. & Rehab., "California Incarcerated Records and Information Search," *available at* https://ciris.mt.cdcr.ca.gov/search.

In any event, even if petitioners may proceed in forma pauperis, and even if the district court wrongfully severed (and subsequently dismissed) their claims, those claims are still subject to dismissal for failure to state a claim. Petitioners' Eighth Amendment and false-imprisonment claims were identical to those of Jones, their third co-plaintiff. *See* C.A. E.R. 24-27. But the district court has already screened Jones's claims under 28 U.S.C. § 1915A and determined that they must be dismissed. Pet. App. 45a,

46a. There is no reason to think petitioners' claims would turn out any differently.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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