No. 05-416

IN THE

Supreme Court of the United States

JEANNE S. WOODFORD and ANTHONY P. KANE,

Petitioners,

v.

VIET MIKE NGO,

Respondent.

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

BRIEF OF THE STATES OF NEW YORK, ALABAMA, ARIZONA, ARKANSAS, COLORADO, DELAWARE, GEORGIA, HAWAII, IDAHO, ILLINOIS, IOWA, KANSAS, MASSACHUSETTS, MICHIGAN, MISSOURI, MONTANA, NEBRASKA, NEVADA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, SOUTH CAROLINA, TEXAS, UTAH, VERMONT, VIRGINIA, AND WASHINGTON, AND THE DISTRICT OF COLUMBIA, AND THE VIRGIN ISLANDS AS AMICI CURIAE IN SUPPORT OF THE PETITIONERS

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STATEMENT OF INTEREST OF AMICI CURIAE

The statutory exhaustion requirement at issue in this case mandates exhaustion of administrative remedies in all actions brought by inmates "with respect to prison conditions." Prison Litigation Reform Act of 1995 ("PLRA"), Pub. L. No. 104-134, § 803(d), 110 Stat. 1321-66, 1321-71 (1996) (codified at 42 U.S.C. § 1997e(a)).[1] In enacting the PLRA, which expanded the scope of the exhaustion requirement for suits brought by prisoners and made exhaustion mandatory in such actions, Congress sought to significantly enhance the ability of amici States to use their prison grievance procedures as a tool for safe and effective prison administration, as well as to reduce the number of prisoner lawsuits.

For decades, prison grievance procedures have played an important role in prison administration. Inmate grievances provide timely feedback to state officials about problems that arise in correctional facilities. In individual cases, grievance procedures enable prison administrators to take prompt remedial action that may satisfy the inmate and obviate the need for litigation. From a systemic perspective, such procedures allow prison officials to monitor trends in prisoner complaints before unwise institutional policies or patterns of inappropriate conduct by correctional officers lead to frustration among the inmate population, potentially triggering prisoner unrest or disturbances. Grievance procedures also allow state officials to create factual records of any disputes that may eventually be litigated in court, and to filter out meritless inmate claims, thereby reducing the States' costs of defending against frivolous prisoner litigation.

1. Section 1997e(a) provides: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

By putting States to the choice of forgoing either full exhaustion or timely filing of inmate grievances, the decision below, if not reversed by this Court, will seriously compromise the efficacy of amici States' prison grievance procedures.

SUMMARY OF ARGUMENT

This case presents the important question of whether an inmate who files an untimely administrative grievance that prison officials properly reject on that ground has nevertheless exhausted his available administrative remedies within the meaning of 42 U.S.C. § 1997e(a). Put another way, the issue is whether the PLRA's exhaustion requirement includes a "procedural default" component.

The United States Courts of Appeals for the Second, Third, Seventh, Tenth, and Eleventh Circuits have concluded that the congressional purposes underlying § 1997e(a) are better served by applying a procedural default rule. *See Williams v. Comstock*, 425 F.3d 175 (2d Cir. 2005); *Spruill v. Gillis*, 372 F.3d 218, 230 (3d Cir. 2004); *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002); *Ross v. County of Bernalillo*, 365 F.3d 1181, 1186 (10th Cir. 2004); *Johnson v. Meadows*, 418 F.3d 1152, 1159 (11th Cir. 2005). On the other hand, the Sixth Circuit and, in the decision below, the Ninth Circuit have concluded that the timeliness of an inmate's grievance is essentially irrelevant to the PLRA's exhaustion requirement. Pet. App. 1-21; *Thomas v. Woolum*, 337 F.3d 720, 735 (6th Cir. 2003).

While the language of § 1997e(a) does not specifically address the issue, the policies underlying the PLRA's exhaustion requirement unmistakably indicate that failure to timely grieve a dispute should generally constitute a procedural default that bars litigation of that claim. This Court

has explained that an inmate's use of prison grievance procedures helps to "reduce the quantity and improve the quality" of prisoner litigation by filtering out some claims and facilitating the development of a factual record for claims that do wind up in litigation. *Porter v. Nussle*, 534 U.S. 516, 524-525 (2002). Because those benefits are realized only when grievances are considered by prison officials on the merits, Congress intended for the PLRA's exhaustion requirement to create strong incentives for inmates to file timely grievances likely to result in such merits consideration. The Ninth Circuit's rule would nullify these incentives by treating timely and untimely grievances as equally acceptable ways for an inmate to exhaust administrative remedies.

Further, under the Ninth Circuit's cramped reading, the PLRA's exhaustion requirement would have the perverse effect of impairing, rather than enhancing, the utility of prison grievance systems as a tool for prison management. Deadlines are essential to the operation of prison grievance procedures — they facilitate prompt investigation and resolution of grievances, allow for swift remedial responses, and ensure that prison officials receive timely information about prisoner complaints before inmate dissatisfaction leads to unrest. The Ninth Circuit's rule essentially confronts prison officials with two equally bad alternatives: They can either continue to enforce those critical administrative deadlines but forgo a prisoner's exhaustion of administrative remedies prior to filing suit, or, alternatively, routinely consider inmate grievances on the merits regardless of how untimely they may be filed. This Court should confirm that the PLRA does not require this illogical result.

Finally, there is no merit to the Ninth Circuit's contention that applying a procedural default rule would require a court to go beyond the plain text of the PLRA's exhaustion requirement. To the contrary, a party generally must comply

with administrative filing deadlines in order to be deemed to have exhausted his administrative remedies, which is precisely what § 1997e(a) prescribes. Moreover, in the habeas corpus context, this Court has recognized that a procedural default rule is essential to preserve the effectiveness of the exhaustion requirement. The same functional considerations require the recognition of a procedural default rule here.

ARGUMENT

I. A Procedural Default Rule is Necessary for the PLRA's Exhaustion Requirement to Serve Its Intended Purposes of Reducing the Quantity and Improving the Quality of Prisoner Litigation.

As the majority of courts have recognized, *see supra* at 2, the PLRA's exhaustion requirement will be largely rendered toothless unless it is construed to include a procedural default component. The PLRA's core objective is to reduce the burden that prisoner litigation places on the nation's courts. Its enactment was spurred by the "alarming explosion in the number of frivolous lawsuits filed by State and Federal prisoners," with inmate filings having risen "from 6,600 in 1975 to more than 39,000 in 1994." 141 Cong. Rec. S14413 (daily ed. Sept. 27, 1995) (statement of Sen. Dole). According to bill sponsors, "[f]rivolous lawsuits filed by prisoners tie up the courts, waste valuable judicial and legal resources, and affect the quality of justice enjoyed by the law-abiding population." 141 Cong. Rec. S7523, S7524 (daily ed. May 25, 1995) (statement of Sen. Dole); *see also id.* at S7526 (statement of Sen. Kyl) ("[I]nmate suits are clogging the courts and draining precious judicial resources."). By enacting the PLRA, Congress aimed to "help bring relief to a civil justice system overburdened by frivolous prisoner lawsuits." 141 Cong. Rec. S14413, S14418 (daily ed. Sept. 27, 1995) (statement of Sen. Hatch); *see also id.* at S14414 (statement of Sen. Dole) ("If enacted, [the PLRA] would go a long way to take the frivolity out of frivolous inmate litigation.").

"Beyond doubt," Congress meant for the strict, mandatory exhaustion requirement of § 1997e(a) "to reduce the quantity and improve the quality of prisoner suits." *Porter*, 534 U.S. at 524. The exhaustion requirement serves this end by "afford[ing] corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case." *Id.* at 525.

Funneling prisoner complaints into the administrative grievance process has several benefits. First, "corrective action taken [by prison officials] in response to an inmate's grievance might improve prison administration and satisfy the inmate, thereby obviating the need for litigation." *Id.*; *accord Booth v. Churner*, 532 U.S. 731, 737 (2001).[2] Second, "internal review might 'filter out some frivolous claims,'" *Porter*, 534 U.S. at 525 (quoting *Booth*, 532 U.S. at 737) — for example, by satisfying the inmate's desire to have his complaint heard, or by offering the inmate a persuasive explanation why the claim is baseless.[3] Third, "for

2. Many inmate complaints may have merit if cast as administrative grievances, but nevertheless may be frivolous when framed as a constitutional claim in a 42 U.S.C. § 1983 suit or an action under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Directing such complaints into the prison grievance process serves the dual purposes of ensuring that those grievances are first heard in the forum that can most effectively address them and reducing the burden of frivolous prisoner litigation on the courts. 141 Cong. Rec. S7523, S7527 (daily ed. May 25, 1995) (statement of Sen. Kyl) ("Many prisoner cases seek relief for matters that are relatively minor and for which the prison grievance system would provide an adequate remedy.").

3. Another PLRA provision, 28 U.S.C. § 1915(g), generally disqualifies from *in forma pauperis* status an inmate who has had three or more lawsuits dismissed "on the grounds that [they were] frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted." Accordingly, if the administrative review process

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cases ultimately brought to court, adjudication could be facilitated by an administrative record that clarifies the contours of the controversy." *Porter*, 534 U.S. at 525; *see also* 141 Cong. Rec. H14078, H14105 (daily ed. Dec. 6, 1995) (statement of Rep. LoBiondo) (explaining that "new administrative exhaustion language" would "provide some degree of fact-finding so that when or if the matter reaches Federal court there will be a record upon which to proceed in a more efficient manner").

Plainly, for the administrative grievance process to provide these benefits, a grievance filing must result in an investigation and resolution of the grievance by prison officials *on the merits.* As a category, late administrative grievances that are dismissed for untimeliness carry no possibility of (1) triggering corrective action that satisfies the inmate without litigation; (2) filtering out frivolous claims; or (3) developing a factual record that defines and narrows disputed issues in advance of litigation.[4]

Accordingly, the PLRA's exhaustion requirement can succeed in reducing the burden of inmate litigation on

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convinces the inmate that a grievance is likely frivolous, the inmate has good reason not to pursue a lawsuit, because a resulting dismissal may jeopardize his future eligibility for ***in forma pauperis*** status with regard to other complaints that may have more merit.

4. Some prison grievance procedures provide that prison officials may excuse untimely filings under defined circumstances. *See, e.g.*, 7 N.Y.C.R.R. § 701.7(a)(1) note; 28 C.F.R. § 542.14(b); *see also* Cal. Code Regs. tit. 15, § 3084.3(c)(6) (providing that an administrative appeal "may be rejected" for untimeliness). Where prison officials accept a late filing and address it on the merits, it is appropriate to consider that filing "timely" for the purpose of the PLRA's exhaustion requirement since, in such cases, the goals of exhaustion are fully served. *See Ross*, 365 F.3d at 1186; *Pozo*, 286 F.3d at 1025.

caseloads nationwide only to the extent that it increases the proportion of inmate complaints that are resolved on the merits through the administrative grievance process. *See Thomas*, 337 F.3d at 738 (Rosen, J., dissenting in part) ("[T]he core purpose of § 1997e(a)'s exhaustion requirement is to ensure that prisoner grievances are resolved administratively to the greatest extent possible."). A procedural default rule is well adapted to that end, since it creates "an overwhelming incentive for a prisoner to pursue his claims to the fullest within the administrative grievance system," *Spruill*, 372 F.3d at 230, and to do so in such a manner that prison officials are likely to address the claims on the merits. By contrast, the Ninth Circuit's holding that even untimely administrative filings can suffice to exhaust remedies all but nullifies the statute's effect on inmates' incentives to file a timely grievance, and, as a consequence, significantly diminishes the provision's effectiveness to direct prisoner complaints into the grievance process for merits consideration. *See Pozo*, 286 F.3d at 1025 (If "prisoners need not file timely complaints and appeals, then the incentive that § 1997e(a) provides for prisoners to use the state process will disappear.").[5]

In its recent PLRA exhaustion decisions, this Court has unanimously turned back inmates' efforts to create exceptions that would allow them to evade the statute's strict exhaustion mandate. Thus, *Booth v. Churner* rejected as "highly implausible" a reading of § 1997e(a) that would "give

5. The Ninth Circuit asserted that "[p]risoners have every incentive to seek administrative review before suing in federal court" because the grievance process "offer[s] prisoners the fastest route to a remedy." Pet. App. 16, 17; *accord Thomas*, 337 F.3d at 732. But that contention merely denies the need for an exhaustion requirement for prisoner suits. Indeed, because Congress found that inmates were underutilizing prison grievance processes, it enacted the PLRA's exhaustion requirement to correct that problem.

prisoners a strong inducement to skip the administrative process" by fashioning their complaint to seek monetary relief that was unavailable through prison grievance procedures. 532 U.S. at 741. Similarly, in *Porter v. Nussle*, this Court declined to adopt an exception to the exhaustion requirement for prisoner complaints alleging "isolated episodes" of misconduct by corrections officers, thinking it "unlikely that Congress, when it included in the PLRA a firm exhaustion requirement, meant to leave the need to exhaust to the pleader's option." 534 U.S. at 530.

The Ninth Circuit's understanding of the PLRA's exhaustion requirement should be rejected for similar reasons. While the court of appeals disclaimed any intention to excuse an inmate from making at least some attempt at pursuing administrative remedies, its rule nevertheless gives the inmate the option of only nominally doing so through the empty formality of a long-untimely administrative filing — an avenue that is little better than dispensing with the exhaustion requirement in its entirety. The PLRA's exhaustion requirement reflects a clear congressional desire for inmate grievances to be resolved on the merits through administrative processes. The Ninth Circuit's approach undermines that goal, and "leave[s] § 1997e(a) without any oomph." *Pozo*, 286 F.3d at 1025. This Court should reverse the Ninth Circuit to ensure that the PLRA can serve its intended goals.

II. The PLRA Requires that Inmates Fully Utilize Grievance Procedures, Rather Than Providing a Bare Opportunity for Prison Officials to Address Inmate Complaints.

The Ninth Circuit's analysis proceeds from the false premise that the sole purpose of the PLRA's exhaustion requirement is to allow prison officials *some* opportunity to address grievances internally, regardless of whether that opportunity accords with the procedural rules of the prison's grievance resolution system. The court of appeals gave great weight to the fact that California's prison grievance procedures, like those of many other correctional systems, allow prison officials a measure of discretion to excuse untimeliness and reach the merits of a late-filed grievance. Thus, in the Ninth Circuit's view,

> [h]olding that the PLRA does not contain a procedural default bar . . . would in no way obstruct the goal of allowing prison officials first crack at resolving prisoners' grievances. It is for the prison to decide whether to exercise its discretion and accept or refuse the opportunity to hear the case on the merits regardless whether the grievance is timely filed.

Pet. App. 17; *see also Thomas*, 337 F.3d at 726.

While the Ninth Circuit took comfort from the fact that an inmate in California would still be required to file a grievance even if he missed the filing deadline by many months or even longer, Pet. App. 17, not all States provide officials with similar discretion to disregard administrative time limits for inmate filings. In Mississippi, for example, inmates are limited to a total of twenty-five days in extensions at all levels of the administrative process. Miss. Dep't of Corr., S.O.P. 20-08-01, l. 213, at 6 (available on request from the Mississippi Dep't of Corrections). *See also* Idaho Dep't of Corr., Policy No. 316, § 05.03.00, at 3, *available at* http://www.corrections.state. id.us/policy/int316.pdf (last visited Dec. 29, 2005) (permitting the

initial fifteen-day filing deadline to be extended by a maximum of sixty days). Similarly, Iowa's grievance procedures provide that appeals from adverse decisions "will not be heard" if submitted after the fifteen-day deadline for such filings. Iowa Dep't of Corr., Policy No. IN-V-46, at 5-6 (available on request from the Iowa Department of Corrections).[6]

It is unclear whether the Ninth Circuit's approach would require an inmate to file a grievance even after the lapse of hard deadlines. If so, the rule would reduce the PLRA's exhaustion requirement to a charade. If not, the rule would enable inmates in certain state correctional systems to exhaust their administrative remedies by doing nothing more than waiting until the deadlines pass. Either way, congressional intent would be wholly undermined.

Further, the Ninth Circuit's gloss on the PLRA's exhaustion requirement — that it requires only that prison officials receive some opportunity to address a grievance on the merits — cannot account for core features of the mandate that an inmate "exhaust the grievance procedures offered" at the administrative level. *Booth*, 532 U.S. at 738. For example, case law from both the

6. Those prison grievance systems that vest officials with discretion to excuse untimely filings generally require the prisoner to satisfy a narrowly drawn exception. *See, e.g.*, Fla. Admin. Code 33-103.011(2) (inmate must "clearly demonstrate[]" that "it was not feasible to file the grievance within the relevant time period[]" and that he "made a good faith effort" to file timely); Maine Dep't of Corr., Policy No. 29.1, at 4 (available on request from the Maine Department of Corrections) (exceptions permitted where "it was not possible" for an inmate to meet the deadline); Mont. Dep't of Corr., Policy No. MSP 3.3.3, at 2 (available on request from the Montana Department of Corrections) ("extensions may be granted . . . in exceptional circumstances"); 7 N.Y.C.R.R. § 701.7(a)(1) note (requiring "mitigating circumstances"); 28 C.F.R. § 542.14(b) (inmate must "demonstrate[] a valid reason for delay"). The Ninth Circuit deems an untimely filing to provide prison officials with an adequate "opportunity" to address a complaint if an exception to timeliness is theoretically available, regardless of whether the inmate can make the required showing to support such an exception in his case.

Sixth and Ninth Circuits requires inmates to pursue all levels of available review provided by the prison grievance system. *See, e.g., Hartsfield v. Vidor*, 199 F.3d 305, 309 (6th Cir. 1999); *Brown v. Valoff*, 422 F.3d 926, 934-35 (9th Cir. 2005). It is not enough, therefore, for an inmate to give prison officials an "opportunity" to address his claim at the initial level of review. Rather, the inmate must fully utilize the prison's grievance procedures. It is anomalous, to say the least, to dismiss the claims of an inmate who filed a timely grievance without pursuing all administrative appeals, but to excuse another inmate's long-untimely filing on the ground that prison officials nevertheless had an opportunity to address the inmate's claim if they wished to do so.

Moreover, the "bare opportunity" theory wrongly conceives of the PLRA's exhaustion requirement principally as a "benefit accorded to state prisons." *Thomas*, 337 F.3d at 726. As explained above, § 1997e(a) was meant to be much more than that. Indeed, its primary objective was to alleviate the crushing burden that prisoner litigation was imposing on the nation's courts. The statute furthers that goal by exploiting the ability of existing prison grievance procedures to provide relief that may satisfy an inmate without litigation, to filter out frivolous claims, and to develop a record that may help to define the contours of any litigation. Only administrative grievances that are considered on the merits provide those benefits.

Thus, to conclude that the PLRA's exhaustion requirement has no procedural default component, one must believe that Congress did not aim to strongly encourage inmates to file timely prison grievances, but rather was content to pin the effectiveness of the exhaustion requirement on hopes that prison officials would seize any "opportunity" to consider grievances on the merits, no matter how and when

those grievances were presented. That view is squarely at odds with Congress's clear intent to "invigorate[] the exhaustion prescription" for inmate suits. *Porter*, 534 U.S. at 524; *see also Pozo*, 286 F.3d at 1025 ("Prisons are unlikely to entertain many appeals filed a year late, or by prisoners who otherwise thumb their noses at the specified procedures.").

In addition, that approach "improperly shifts the burden [of the exhaustion requirement] from inmates to prison officials." *Thomas*, 337 F.3d at 742 (Rosen, J., dissenting in part). Indeed, the Ninth Circuit's rule confronts prison officials with the dilemma of either enforcing applicable administrative time frames for inmates to file their grievances, or routinely ignoring such limits in order to allow for untimely grievance filings to yield the benefits of meaningful exhaustion. Choosing the latter course essentially erases the grievance system's deadlines and sacrifices the integrity of the grievance procedures in exchange for the reduction of judicial caseloads.

Administrative time limits are critical to the effectiveness of grievance processes as tools for prison management. No dispute resolution procedure can operate without such deadlines, and strong imperatives of prison management require that the time limits for prison grievance filings and appeals, as well as those for prison officials' decisions on such filings, be rather short. *See, e.g.*, N.Y. Correction Law § 139(2) (requiring the development of procedures "for the fair, simple and expeditious resolution of [inmate] grievances," including "time limitations for the filing of complaints and replies thereto and for each stage of the grievance resolution process").

For example, such deadlines allow the administrative process to capture "the inherent benefit of prompt

investigation, while memories are still fresh and all involved inmates and prison employees remain at the facility." *Thomas*, 337 F.3d at 753 (Rosen, J., dissenting in part). Facilitating effective investigation is essential given the large volume of grievances that prison officials often must process and the quotidian nature of many inmate grievances. *See, e.g.*, N.Y. Dep't of Corr. Servs., *Inmate Grievance Program Annual Report* 2-3 (2004) (showing that inmates in the New York State correctional system filed 44,587 grievances in 2004); Ohio Dep't of Rehab. & Corr., *CY 2003 Annual Report of the Office of the Chief Inspector* 5 (2004) (finding that inmates in Ohio state prisons filed 29,734 informal complaint resolution forms and 6,515 formal grievances in 2003); *see also Preiser v. Rodriguez*, 411 U.S. 475, 492 (1973) (noting that "most potential litigation involving state prisoners arises on a day-to-day basis").

The administrative deadlines of grievance systems also reflect "the desire to bring the entire matter, including all available internal appeals, to a conclusion within a reasonable time period." *Thomas*, 337 F.3d at 753 (Rosen, J., dissenting in part). *Cf. also* Bruce Bernstein, *The Federal Bureau of Prisons Administrative Grievance Procedure: An Effective Alternative to Prisoner Litigation?*, 13 Am. Crim. L. Rev. 779, 786 (1976) ("One of the most important factors in any successful administrative procedure is the speed with which it can attain issue resolution"). That goal assumes added importance when an inmate's lawsuit must await the conclusion of the administrative process. *See McCarthy v. Madigan*, 503 U.S. 140, 147 (1992) (recognizing the "prejudice" that "may result . . . from an unreasonable or indefinite timeframe for administrative action" where exhaustion is required). Further, the time limits enable swift remedial action, which minimizes the adverse consequences of any earlier error and is more likely to satisfy the inmate than a delayed response.

Finally, the deadlines help to ensure that corrections officials receive timely feedback about problems before inmate dissatisfaction with institutional policies or the conduct of prison employees festers and leads to unrest or disturbances among the prison population. Indeed, New York's prison grievance procedures were developed in 1975 in direct response to the Attica uprising in September 1971, in which forty-three persons died. *See Matter of Patterson v. Smith*, 53 N.Y.2d 98, 101 (1981) ("The McKay Commission, appointed to look into the causes of that uprising and make recommendations for change, concluded that a major cause of inmate tension was the lack of a nonviolent means of resolving grievances."); *see also* Bernstein, *supra*, at 779-80 (discussing the relationship between episodes of inmate violence in the 1970s and the development of prisoner grievance procedures).

It is illogical to suppose that Congress meant for the PLRA's exhaustion requirement to interfere with prison officials' enforcement of administrative deadlines and to compromise the effectiveness of prison grievance systems — particularly when federal legislators emphasized their desire to the contrary. *See, e.g.*, 141 Cong. Rec. S14413, S14418 (daily ed. Sept. 27, 1995) (statement of Sen. Hatch) ("[I]t is time to . . . return [control of our prisons] to competent administrators").[7] Yet that assumption is exactly what the Ninth Circuit's holding requires, and accordingly, this Court should reverse it.

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7. The Sixth Circuit expressed concern that recognizing a procedural default rule would spur prison officials to adopt shorter administrative deadlines. *Thomas*, 337 F.3d at 729 n.3. Prison grievance systems, however, are not mere roadblocks to inmate litigation; they serve critical prison management functions. Indeed, such grievance mechanisms largely pre-date any federal exhaustion requirement for prisoner suits. *See* Comptroller General of the U.S. Gen. Accounting Office, *Grievance Mechanisms in State Correctional Institutions and Large-City Jails*, App. I at 5 (June 17, 1977) (reporting in 1977 that forty-three States had grievance

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III. Precedent Construing Other Exhaustion Requirements Supports the Recognition of a Procedural Default Rule Here.

A procedural default rule is not only necessary to serve the PLRA's purposes, but comports with exhaustion requirements in other areas of the law. In administrative law, for example, a party generally must comply with filing deadlines in order to exhaust his remedies. In the habeas corpus context, too, this Court has recognized that a procedural default rule is essential for the exhaustion requirement to be effective. Both of these models of exhaustion support the application of a procedural default rule under the PLRA. By contrast, the Ninth Circuit's examples of regimes without a procedural default rule for untimely filings, those addressed in *Oscar Mayer & Co. v. Evans*, 441 U.S. 750 (1979), and *EEOC v. Commercial Office Products Co.*, 486 U.S. 107 (1988), involve statutes that do not mandate the exhaustion of remedies and have no relevance here.

A. Exhaustion of Administrative Remedies Generally Requires Compliance With Administrative Filing Deadlines.

Section 1997e(a) bars inmates from suing "until such administrative remedies as are available are exhausted." Respondent claims that a procedural default rule would require more than simple exhaustion of remedies, and that there is no foundation in the PLRA's text for such a rule. Cert. Opp. 10. The Ninth Circuit agreed, holding that an

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mechanisms in place and four additional States planned to implement such procedures). Prison officials have a vital interest in ensuring that the grievance process is effective in addressing inmate complaints — an interest that provides a substantial check against the development of unreasonable procedures.

inmate has exhausted administrative remedies when no further remedies "remain available" to him, regardless of whether the inmate fully and properly pursued those remedies. Pet. App. 10; *see also* Cert. Opp. 11 n.1 (an exhaustion requirement is "satisfied once no further state remedies are available"). Along similar lines, the Sixth Circuit has held that § 1997e(a) establishes only a "termination requirement, designed to keep federal courts out as long as the state administrative machinery is working to resolve the problem." *Thomas*, 337 F.3d at 730. Under this view, to read the PLRA to require timely administrative filings is to impose additional "procedural hurdles" beyond mere "exhaustion." Cert. Opp. 10; *see also Thomas*, 337 F.3d at 731 (describing procedural default as "an additional requirement added on top of exhaustion").

In fact, however, a procedural default rule fits comfortably under the rubric of "exhaustion of remedies." Generally, that term means not only that the administrative process is concluded, but also that the party bound to exhaust fully utilized the process that was available to him. *See, e.g.*, *Webster's New Int'l Dictionary* 796 (3d ed. 1981) (defining "exhaust" as "to take complete advantage of (legal remedies)"). Thus, as the Seventh Circuit observed in *Pozo*, in administrative law "exhaustion means using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits)." *Pozo*, 286 F.3d at 1024; *see also Pineda v. Gonzales*, 427 F.3d 833, 838 (10th Cir. 2005) ("We have recognized in a variety of contexts that untimely filings with administrative agencies do not constitute exhaustion of administrative remedies."); *Lacy v. Fulbright & Jaworski, Ltd. Liab. P'ship. Long Term Disability Plan*, 405 F.3d 254, 255 (5th Cir. 2005) (equating "failure to file a timely [administrative] appeal" and "failure to exhaust administrative remedies"); *Cunningham v. R.R. Retirement Bd.*, 392 F.3d 567, 572 (3d Cir. 2004) (noting

that plaintiff did not "exhaust[] her administrative remedies . . . because she failed to timely appeal" an adverse decision); *Glisson v. U.S. Forest Serv.*, 55 F.3d 1325 (7th Cir. 1995) (holding that plaintiff who filed an untimely administrative appeal did not exhaust his remedies).

This Court has explained that the full benefits of exhaustion are not attained merely because "the administrative process is at an end" and thus can no longer afford relief to the claimant. *McKart v. United States*, 395 U.S. 185, 194 (1969). Indeed, important "justifications for requiring exhaustion . . . have nothing to do with the dangers of interruption of the administrative process." *Id.* at 194-95. These include "practical notions of judicial efficiency": If a complaining party is affirmatively "required to pursue his administrative remedies, the courts may never have to intervene." *Id.* at 195; *see also McGee v. United States*, 402 U.S. 479, 483 (1971) (noting that an exhaustion requirement bars suit by one who has "failed to pursue normal administrative remedies and thus has sidestepped a corrective process which might have cured or rendered moot the very defect later complained of in court"). In addition, where a party fails to utilize the administrative process fully, "judicial review may be hindered by the failure of the litigant to allow the agency to make a factual record." *McKart*, 395 U.S. at 194.

The PLRA's exhaustion requirement is animated by just such considerations. Its "dominant concern" is "to promote administrative redress, filter out groundless claims, and foster better prepared litigation of claims aired in court." *Porter*, 534 U.S. at 528. Those ends are not served merely by postponing suit until the administrative process can no longer provide a remedy; rather, inmates must be required to fully exploit the prison grievance system to allow prison officials an opportunity to render a decision on the merits of any

formal inmate complaint.[8] *See supra* at 4-8. A procedural default rule is therefore necessary to implement the PLRA in accordance with its intended purposes.[9]

B. This Court's Habeas Corpus Precedents Further Demonstrate the Inseparability of Exhaustion and Procedural Default in the PLRA Context.

Respondent argued, and the Ninth Circuit agreed, that exhaustion as required by the PLRA should be strictly defined in the same manner as it is in the federal habeas corpus context. Pet. App. 10. It is true that the federal habeas exhaustion requirement, taken alone, mandates only that a petitioner have no remaining state remedies "available" when a habeas petition is filed. *See Fay v. Noia*, 372 U.S. 391, 434-36 (1963), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977); Henry M. Hart, Jr., *The Supreme Court, 1958 Term - Foreword: The Time Chart of the Justices*, 73 Harv. L. Rev. 84, 113 (1959) (discussing the early

8. The Ninth Circuit noted that § 1997e(a) precludes suit "until" an inmate exhausts administrative remedies, which in its view suggests a mere rule of timing. As shown above, however, the goals of § 1997e(a), as framed by this Court, go well beyond timing considerations. That being so, the provision's use of the word "until" is far too slender a reed to support the Ninth Circuit's holding.

9. Before the PLRA's enactment, this Court declined to create by judicial decision an exhaustion requirement for *Bivens* actions brought by federal inmates. *See McCarthy*, 503 U.S. at 152. In concluding that the costs of such an exhaustion requirement would outweigh its benefits, this Court treated a procedural default rule as part and parcel of requiring exhaustion. *Id.* (noting that an exhaustion requirement would create a "risk of forfeiture" by inmates' failures to meet administrative filing deadlines). By enacting the PLRA, Congress overruled *McCarthy*, leading this Court to observe that Congress "may well have thought" the *McCarthy* analysis "shortsighted" in discounting the benefits of exhaustion. *Booth*, 532 U.S. at 737.

development of the habeas exhaustion rule as an abstention principle).[10] Yet this Court applies a procedural default rule in federal habeas cases as well. *See, e.g., Wainwright*, 433 U.S. at 81. While the procedural default doctrine had its early roots in the "adequate and independent state ground" doctrine, and although it may technically be distinct from the federal habeas statute's exhaustion requirement, the exhaustion and procedural default doctrines are tightly yoked functionally, as this Court has repeatedly recognized.

Indeed, this Court has observed that a procedural default rule is necessary "to protect the integrity of" the federal habeas exhaustion requirement. *O'Sullivan v. Boerckel*, 526 U.S. 838, 853 (1999); *accord Dretke v. Haley*, 541 U.S. 386, 392 (2004) (describing the procedural default doctrine as a "corollary to the habeas statute's exhaustion requirement"). This Court has further described the two doctrines as "inseparab[le]," remarking that without a procedural default rule, the exhaustion requirement would be "render[ed] . . . illusory." *Edwards v. Carpenter*, 529 U.S. 446, 452-53 (2000).

As discussed *supra* at 4-8, a procedural default rule is likewise essential to preserving the effectiveness of the PLRA's exhaustion requirement. The Ninth Circuit rejected the habeas analogy because the relationship between prison

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10. Section 2254(b) of title 28 of the United States Code codifies the habeas exhaustion principle and bars a federal court from granting habeas relief "unless . . . the applicant has exhausted the remedies available in the courts of the State." The statute makes clear that a remedy is considered "available" only if the doors of state court remain open to the applicant at the time a petition is filed, providing that "[a]n applicant shall not be deemed to have exhausted his remedies . . . if he has the right to raise, by any available procedure, the question presented." *See also* Hart, *supra*, at 113 n.87 (parsing the text of § 2254).

grievance procedures and § 1983 suits is unlike that between state criminal proceedings and federal habeas proceedings, where the procedural default doctrine is needed to ensure that "the state criminal process" is "the 'main event' rather than a 'tryout on the road' to a dispositive federal habeas hearing." Pet. App. 14 (quoting *Wainwright*, 433 U.S. at 90). But even if that precise rationale may not apply here, other powerful considerations support the recognition of a procedural default rule under the PLRA.

In particular, such a rule forces inmates to lodge complaints with prison officials in such a manner as will maximize the likelihood that such grievances will be resolved on the merits. Without a procedural default rule, the PLRA's exhaustion requirement creates no incentive for inmates to use the administrative process in a meaningful way. The Ninth Circuit's ruling, therefore, would effectively return matters to their pre-PLRA state, with federal litigation occupying the primary role in addressing all manner of prisoner complaints. Congress enacted the PLRA precisely to change that situation.

C. *Oscar Mayer* and *Commercial Office Products* Are Inapposite.

Perhaps the nearest precedents for the Ninth Circuit's rule are *Oscar Mayer Co. v. Evans*, 441 U.S. 750 (1979), and *EEOC v. Commercial Office Products Co.*, 486 U.S. 107 (1988), which construed nearly identical sections of the Age Discrimination in Employment Act ("ADEA") and Title VII, respectively. Pet. App. 18; *see also Thomas*, 337 F.3d at 727. In *Oscar Mayer* and *Commercial Office Products*, this Court held that statutory provisions precluding the filing of a federal lawsuit until sixty days after a complainant "commenced" state administrative proceedings required a complainant to initiate state administrative proceedings as a precondition to

federal suit, but did not require compliance with state administrative filing deadlines. Those *sui generis* provisions differ from the PLRA's exhaustion requirement in nearly every material respect, however, and *Oscar Mayer* and *Commercial Office Products* therefore provide no guidance in construing § 1997e(a).

To begin with, those cases did not involve an exhaustion requirement.[11] The statutes at issue there obligate a complainant only to "commence" state administrative proceedings before filing a federal suit, not to exhaust state administrative remedies. This Court noted that the word "commence" itself "strongly implies . . . that state limitations periods are irrelevant," since generally "even a time-barred action may be 'commenced' by the filing of a complaint." *Oscar Mayer*, 441 U.S. at 759 (reasoning by analogy to Fed. R. Civ. P. 3). The ADEA and Title VII make "th[at] implication . . . express" by deeming a state administrative proceeding "commenced" for the purpose of federal law when the complainant mails a written, signed statement of facts to the state authority, regardless of whether state law purports to impose any additional requirement, such as timeliness, as a precondition to commencement. *Oscar Mayer*, 441 U.S. at 760. The text of § 1997e(a), however, is very different: the word "exhaust," in contrast to "commence," generally connotes full utilization of the administrative processes offered, including timely filings at all levels of review. In the PLRA, moreover, Congress did not override the procedural rules of the nation's diverse prison grievance systems with a uniform federal standard.

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11. Even though neither *Oscar Mayer* nor *Commercial Office Products* involved an exhaustion requirement, the Ninth Circuit cited those cases for the proposition that "administrative exhaustion does not include a procedural default component." Pet. App. 18. As discussed *supra* at 16-18, administrative exhaustion typically does encompass the concept of procedural default.

Equally importantly, the statutory purposes of the ADEA and Title VII are fully served without requiring compliance with state administrative deadlines. On that point, this Court stressed that the statutes "do[] not stipulate an exhaustion requirement," *Oscar Mayer*, 441 U.S. at 761, but aim more modestly to give "state agencies a *limited* opportunity" to resolve complaints before federal authorities intervene, *id.* (emphasis added). The statutory provisions themselves reflect that minimal comity concern, mandating only that the complainant wait sixty days after giving state authorities notice of the claim before filing a federal suit, regardless of whether the state authorities have taken any action by that time.

By contrast, the PLRA's objectives are far broader. Congress manifestly "stipulated" the exhaustion (not just commencement) of prison grievance processes, and did so for the express purposes of alleviating docket congestion from prisoner lawsuits and improving the quality of those suits that do end up in court. As discussed above, those goals require more than a "limited opportunity" for administrative action. They require merits consideration of inmate grievances at the administrative level, which can be ensured only by timely administrative filings.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Ninth Circuit Court of Appeals.

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