No. 00-853

In the Supreme Court of the United States

CORRECTION OFFICER PORTER, ET AL., PETITIONERS

v.

RONALD NUSSLE

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether the exhaustion provision of the Prison Litigation Reform Act of 1995, 42 U.S.C. 1997e(a) (Supp. V 1999), requires an inmate to exhaust available administrative remedies before filing an action alleging a use of excessive force by a correction officer.

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INTEREST OF THE UNITED STATES

This case presents the question whether the exhaustion provision of the Prison Litigation Reform Act of 1995 (PLRA), 42 U.S.C. 1997e(a) (Supp. V 1999), requires an inmate to exhaust available administrative remedies before filing an action alleging a use of excessive force by a correction officer. The United States has a substantial interest in the resolution of that question. Pursuant to its authority to manage federal prisons, the Federal Bureau of Prisons (BOP) has adopted an administrative remedy program through which inmates may seek review of issues relating to their confinement. See 28 C.F.R. 542.10 *et seq.* Moreover, inmates frequently name BOP officials as defendants in actions arising from conditions of confinement in federal correctional institutions. See *e.g. Royster* v. *United States*,

No. 00-0185, 2001 WL 388051 (2d Cir. Apr. 16, 2001), petition for cert. pending, No. 01-100 (filed July 16, 2001). The court's decision in this case will affect both the efficacy of BOP's administrative remedy program and the conduct of litigation against BOP officials.

STATEMENT

1. At the time of the events in question, respondent was confined at the Cheshire Correctional Institution in Cheshire, Connecticut (CCI). Pet. App. A3. In June 1999, respondent filed suit in federal district court, alleging that correction officers at CCI subjected him to a sustained pattern of harassment and intimidation because of his perceived friendship with the Governor of the State of Connecticut. *Ibid.* Respondent specifically alleged that, on or about June 15, 1996, two named correction officers (petitioners), together with other unknown correction officers, placed him against a wall outside his cell, and then struck him with their hands, kneed him in the back, and pulled his hair. *Ibid.* Respondent further alleged that petitioners threatened to kill him if he reported the beating. *Ibid.* Respondent claimed that petitioners' actions constituted cruel and unusual punishment in violation of the Eighth Amendment, a violation of substantive due process, and an assault under state law. *Ibid.* Pursuant to 42 U.S.C. 1983, respondent sought compensatory and punitive damages for the injuries that he allegedly sustained. Pet. App. A3.

CCI has a grievance system for resolving prisoner complaints. J.A. 5-18. Under that procedure, an inmate may file a grievance relating to "[i]ndividual employee and inmate actions including any denial of access of inmates to the Inmate Grievance Procedure," and any matter "relating to access to privileges, programs and services, conditions of care or supervision and living unit conditions within the authority of the Department of Correction." J.A. 8. Respon-

dent did not file a grievance concerning the matters set forth in his complaint. Pet. App. A29.

Petitioners moved to dismiss respondent's complaint for failure to exhaust available administrative remedies as required by the exhaustion provision of the PLRA. Pet. App. A4. That provision directs that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. 1997e(a) (Supp. V 1999).

The district court granted petitioner's motion and dismissed respondent's complaint without prejudice. Pet. App. A22-A30. It rejected respondent's contention that the exhaustion requirement does not apply to excessive force claims. The court explained that "[t]he use of excessive force by correctional officers falls into the category of 'prison conditions,'" *id.* at A28, and that "[c]reating an exception for excessive force claims would circumvent the Congressional purpose of weeding out frivolous claims before they are filed in federal court," *id.* at A29.

2. The court of appeals reversed the district court's judgment, Pet. App. A1-A21, holding that the PLRA's exhaustion provision "does not apply to allegations of particular instances of excessive force or assault by prison employees," *id.* at A2. Relying on a dictionary definition of the term "conditions," the court of appeals concluded that the phrase "prison conditions" in the exhaustion provision refers to "circumstances affecting everyone in the area affected by them, rather than single or momentary matters, such as beatings or assaults." *Id.* at A9 (citation and internal quotation marks omitted).

The court of appeals concluded that the definition of "prison conditions" in the section of the PLRA addressed to prospective relief that courts may award also supported its

interpretation of the exhaustion requirement. Pet. App. A9-A12. The court noted that the definition includes two categories: "conditions of confinement" and "the effects of actions by government officials on the lives of persons confined in prison." *Id.* at A10 (quoting 18 U.S.C. 3626(g)(2) (Supp. V 1999)). The court concluded that the first category "is no more apt to include particular instances of assault or excessive force than the reference to 'prison conditions' in § 1997e(a) itself." *Ibid.* As to the second category, the court concluded that "such awkward language would not, ordinarily, be used to describe such incidents." *Id.* at A11. The court further concluded that, in light of the background and purposes of the prospective relief provisions, the second category's use of the phrase "government officials" refers to "administrative and policymaking officials," *id.* at A13, not to "lower level government employees, such as corrections officers," *id.* at A15.

The court of appeals also relied on this Court's holding in *Hudson* v. *McMillian*, 503 U.S. 1, 9 (1992), that a malicious use of force constitutes cruel and unusual punishment without proof of serious harm, while proof of such harm is necessary to prove other Eighth Amendment claims. Pet. App. A17. The court viewed that distinction as "equally applicable here," because it believed that Section 1997e(a) filters through the exhaustion provision only "claims that may be frivolous as to subject matter." *Ibid.* Finally, the court concluded that, as an exception to the general rule of non-exhaustion in Section 1983 cases, the PLRA's exhaustion requirement should be construed "narrowly." *Ibid.*

SUMMARY OF ARGUMENT

The PLRA's exhaustion requirement applies to actions that challenge particular instances of alleged misconduct as well as actions that challenge practices that affect the prison population generally. An inmate challenging a particular in-

stance of alleged excessive force therefore must exhaust available administrative remedies before filing suit.

The text of the exhaustion provision makes clear that it applies to *all* actions that challenge prison conditions; there is no exception for challenges to prison conditions that affect only a single inmate or that are of brief duration. Nor can such a limitation be derived from the plain meaning of the phrase "prison conditions," as the court of appeals believed. When an individual inmate is placed in isolation, denied a specific medical procedure, or subjected to a use of force, that is a "prison condition" for him, regardless of its duration or whether that condition is inflicted on others.

This Court's decisions confirm that the phrase "prison conditions" includes particular instances of alleged misconduct. In *Preiser* v. *Rodriguez*, 411 U.S. 475, 498 (1973), and *Wilson* v. *Seiter*, 501 U.S. 294 (1991), the Court used the phrases "conditions of confinement" and "prison conditions" to refer to particular instances of alleged misconduct. In *McCarthy* v. *Bronson*, 500 U.S. 136, 142 (1991), the Court interpreted the phrase "conditions of confinement" in the magistrate referral statute to encompass a single episode of excessive force. Moreover, all the rationales for the PLRA's exhaustion requirement apply with full force to claims alleging excessive force or challenging other individual incidents.

The court of appeals interpreted the PLRA's exhaustion requirement in a manner contrary to the overall thrust of the PLRA. Having adopted an exhaustion requirement in order to help reduce the crushing burden that prison lawsuits impose on courts, Congress could not have intended for there to be extensive proceedings simply to determine whether a claim must be exhausted. In addition, the pre-PLRA exhaustion provision contained numerous limits and exceptions, but it extended to all actions challenging state prison conditions, including isolated incidents. The PLRA eliminated the constraints on exhaustion and dramatically

expanded the number of claims governed by a strict exhaustion requirement. It is highly implausible that the Congress that adopted a significantly broader exhaustion requirement simultaneously dramatically cut back on its scope. In fact, numerous statements made during the course of Congress's consideration of the PLRA show that the exhaustion requirement applies to all prison conditions—isolated incidents and recurring practices alike.

The separate definition of prison conditions for purposes of the PLRA's procedures for certain injunctions confirms the broad reach of the PLRA's exhaustion requirement. Both halves of the definition of "prison conditions" in 18 U.S.C. 3626(g) include particular instances of alleged misconduct. When read in light of the Court's decisions in *Prieser*, *Bronson*, and *Wilson*, the phrase "conditions of confinement" includes particular instances of alleged misconduct. The phrase "the effects of actions by government officials on the lives of persons confined in prison" is even better suited to capture particularized misconduct, such as uses of excessive force.

The Court's holding in *McMillian* that a malicious use of force is cruel and unusual without proof of serious harm, while other Eighth Amendment claims require such proof, has no relevance here. The standards for proving a particular claim have no bearing on whether it is appropriate to require an inmate to raise that claim in a prison grievance process before filing suit. Nor should the PLRA's exhaustion requirement be construed narrowly in order to give maximum effect to Section 1983's general rule of nonexhaustion. The PLRA's exhaustion requirement addresses Section 1983 actions specifically and is part of a comprehensive set of measures designed to address the extraordinary problems posed by prisoner lawsuits. It represents a deliberate and dramatic departure from prior law. It is there-

fore inappropriate to construe the PLRA's exhaustion requirement narrowly.

ARGUMENT

AN ACTION CHALLENGING A PARTICULAR INSTANCE OF ALLEGED EXCESSIVE FORCE IS AN ACTION WITH RESPECT TO "PRISON CONDITIONS" WITHIN THE MEANING OF THE PLRA'S EXHAUSTION REQUIREMENT

The PLRA's exhaustion requirement directs that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. 1997e(a) (Supp. V 1999). The court of appeals in this case held that actions challenging "particular instances" of alleged excessive force by prison guards are not actions "with respect to prison conditions" within the meaning of Section 1997e(a), and that inmates can therefore bring such claims without exhausting available administrative remedies. Pet. App. A7-A8.

In subsequent cases, the Second Circuit has made clear that its exception to the exhaustion requirement is not limited to excessive force claims. The Second Circuit has explained that the exhaustion requirement applies when an inmate challenges "aspects of prison life affecting the entire prison population," *Lawrence* v. *Goord*, 238 F.3d 182, 185 (2001), or conduct that is "clearly mandated by a prison policy or undertaken pursuant to a systematic practice," *Marvin* v. *Goord*, No. 99-0325, 2001 WL 686838, at *1 (June 19, 2001) (per curiam), but that it does not apply to any case in which an inmate challenges "particularized instances" of alleged misconduct. *Lawrence*, 238 F.3d at 186; *Marvin*, 2001 WL 686838, at * 1; see also *Royster* v. *United States*,

No. 00-0185, 2001 WL 388051, at *1-*2 (2d Cir. Apr. 16, 2001), petition for cert. pending, No. 01-100 (filed July 16, 2001); *Giano* v. *Goord*, 250 F.3d 146, 150 (2d Cir. 2001).

That reading of the PLRA's exhaustion requirement is incorrect. As four courts of appeals have held, the exhaustion requirement applies equally to actions that challenge particular instances of alleged misconduct and those that challenge practices that affect the prison population generally. *Smith* v. *Zachary*, No. 99-4084, 2001 WL 723010 (7th Cir. June 28, 2001); *Higginbottom* v. *Carter*, 223 F.3d 1259 (11th Cir. 2000); *Freeman* v. *Francis*, 196 F.3d 641 (6th Cir. 1999); *Booth* v. *Churner, C.O.*, 206 F.3d 289 (3d Cir. 2000), aff'd on other grounds, 121 S. Ct. 1819 (2001).

A. The Text Of The Exhaustion Provision Includes Actions That Challenge Particular Instances Of Alleged Misconduct

The text of the exhaustion provision directs that "[n]o" action may be brought "with respect to prison conditions" absent the exhaustion of available administrative remedies. 42 U.S.C. 1997e(a) (Supp. V 1999). By its terms, the PLRA's exhaustion requirement applies to *all* actions that challenge prison conditions; there is no exception for challenges to prison conditions that affect only a single inmate or that last for only a brief period of time.

Nor can such a limitation be derived from the plain meaning of the phrase "prison conditions," as the court of appeals believed. Pet. App. A9. That phrase undoubtedly encompasses prison practices that affect prison life for all inmates. But it also encompasses specific actions directed to particular inmates. When an individual inmate is placed in isolation, or denied requested medical care or access to a particular document, or endures a use of force, that is a "prison condition" for him, regardless of its duration or whether everyone else in the prison experiences the same conditions.

This Court's decisions in *Preiser*, *Bronson*, and *Wilson* all support that conclusion. In *Preiser*, the Court held that inmates may challenge the "conditions of their confinement" under 42 U.S.C. 1983, but that an inmate may challenge "the fact or duration of his physical confinement" only by filing a petition for a writ of habeas corpus. The Court gave as examples of challenges to conditions of confinement inmate actions complaining of: (1) the denial of the right to purchase religious publications, (2) the confiscation of legal materials, and (3) placement in solitary confinement as a disciplinary measure. *Preiser*, 411 U.S. at 498-499. Those examples "were all challenges to specific instances of unconstitutional conduct." *Bronson*, 500 U.S. at 142. Although the PLRA uses the phrase "prison conditions," rather than "conditions of confinement," that minor difference in phraseology is not significant. Indeed, the Court in *Preiser* used the two phrases interchangeably. Compare 411 U.S. at 498 ("The respondents place a great deal of reliance on our recent decisions upholding the right of state prisoners to bring federal civil rights actions to challenge the conditions of their confinement.") with *id.* at 499 ("This is not to say that habeas corpus may not also be available to challenge such prison conditions."). *Preiser* therefore establishes that prison conditions include not only broad policies that affect the entire prison population, but also specific actions directed at particular inmates.

Bronson reinforces that conclusion. In *Bronson*, the Court held that a statute that authorized the referral to magistrates of "prisoner petitions challenging conditions of confinement" (500 U.S. at 137) applied to a prisoner petition alleging a single episode of excessive force. *Id.* at 139-144. Relying in significant part on *Preiser*, and Congress's presumed familiarity with that decision, the Court rejected the inmate's contention that the phrase "'conditions of confinement' includes continuous conditions and excludes isolated

incidents." *Id.* at 139. The Court explained that *Preiser* had described two broad categories of prisoner actions—"those challenging the fact or duration of confinement itself," and "those challenging the conditions of confinement," and *Preiser*'s "description * * * of the latter category unambiguously embraced the kind of single episode cases that petitioner's construction would exclude." *Id.* at 140-141.

Wilson is equally persuasive on that point. There, the Court held that inmates challenging conditions of confinement must show a culpable state of mind in order to establish an Eighth Amendment violation. In reaching that conclusion, the Court relied on the holdings in *Estelle* v. *Gamble*, 429 U.S. 97 (1976), and *Whitley* v. *Albers*, 475 U.S. 312 (1986), that inmates alleging a deprivation of adequate medical care and the use excessive force during a riot must demonstrate a culpable state of mind. The *Wilson* Court rejected the concurring opinion's effort to distinguish those cases on the ground that they did not involve "conditions of confinement," but rather "specific acts or omissions directed at individual prisoners." 501 U.S. at 299 n.1. The Court stated that "if an individual prisoner is deprived of needed medical treatment, that is a condition of *his* confinement, whether or not the deprivation is inflicted upon everyone else." *Ibid.* The Court further explained that "[u]ndoubtedly deprivations inflicted upon all prisoners are, as a policy matter, of greater concern than deprivations inflicted upon particular prisoners, but we see no basis whatever for saying that the one is a 'condition of confinement,' and the other is not." *Ibid.* Like the Court in *Preiser*, the Court in *Wilson* used the phrase "conditions of confinement" interchangeably with the phrase "prison conditions." Compare the passage quoted above with *id.* at 299-300 ("Petitioner concedes that this is so with respect to some claims of cruel and unusual prison conditions.") (emphasis omitted) and *id.* at 300 ("The long duration of a cruel prison condition may

make it easier to establish knowledge and hence some form of intent.") (emphasis omitted).

To be sure, the phrase "prison conditions" does not invariably or inescapably encompass particular instances of misconduct. The context in which that phrase is used may suggest that it has a narrower meaning. For example, in *Bronson*, the Court cited 42 U.S.C. 3769a(b), 3769b(a)(1) as an example of a statute that *may* use the phrase "conditions of confinement" to refer to "ongoing conditions." 500 U.S. at 142 & n.3. That statute requires state governments to develop a "plan for . . . improving conditions of confinement" as a precondition to receiving federal funds to "reliev[e] overcrowding [and] substandard conditions." The use of the phrase in the context of a precondition for an ongoing funding program may suggest a focus on broader conditions affecting the inmate population as a whole. See also *Hudson* v. *McMillian*, 503 U.S. 1, 8-9 (1992) (discussed at pp. 25-26, *infra*). But *Preiser*, *Bronson*, and *Wilson* make clear that, absent contextual limitations of that kind, the phrase "prison conditions" includes particularized conduct. Moreover, to the extent context informs the meaning of the term "prison conditions," the overall context of the PLRA supports a broad rather than a narrow construction of that term in the PLRA's exhaustion requirement. See pp. 12-20, *infra*.

Rather than interpreting the PLRA's exhaustion provision in light of *Preiser*, *Bronson*, and *Wilson*, the court of appeals derived the "plain meaning" of "prison conditions" from *Webster's Third New International Dictionary* (*Webster's*) 473 (1961), which defines "conditions" as "attendant circumstances," or an "existing state of affairs." Pet. App. A9. Even that definition of "conditions" unmodified, however, does not support the court of appeals' interpretation. A particular instance of misconduct, such as a use of excessive force, is an "attendant circumstance" of an in-

mate's confinement—it is connected to, and a consequence of, confinement. See *Webster's* 140 (1993) (definition of "attendant": (3) "accompanying, connected with, or immediately following as consequential"). Ultimately, however, the question at issue here does not depend on the meaning of the term "conditions" unmodified. Instead, it depends on the meaning of the phrase "prison conditions" as used in the PLRA's exhaustion requirement. When viewed against the backdrop of *Preiser*, *Bronson*, and *Wilson*, as well as the broader purposes of exhaustion and the PLRA, that phrase includes particular instances of misconduct.

B. The Exhaustion Of Claims Challenging Particular Instances Of Alleged Misconduct Directly Advances The Purposes Of The PLRA's Exhaustion Requirement

Interpreting the phrase "prison conditions" to include particular instances of misconduct directly advances the purposes of the PLRA's exhaustion requirement. Cf. *Bronson*, 500 U.S. at 142-143. Those purposes are to (1) give prison authorities the opportunity to resolve problems within the prison without judicial intervention, (2) help reduce the volume of prison litigation in federal courts, and (3) develop the underlying facts in a way that facilitates litigation in the event a case ends up in court. *Booth* v. *C.O. Churner*, 121 S. Ct. 1819, 1823 (2001); see *McCarthy* v. *Madigan*, 503 U.S. 140, 144-146 (1992).*

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* See also 141 Cong. Rec. 35,624 (1995) (Rep. LoBiondo) (exhaustion requirement will "provide the opportunity for early resolution of the problem," "reduce the intrusion of the courts into the administration of the prisons," and "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"); *id.* at 14,573 (Sen. Kyl) ("An exhaustion requirement is appropriate for prisoners given the burden that their cases place on the Federal court system, the availability of administrative remedies, and the lack of merit of many of the claims."); *id.* at 14,570 (Sen.

Requiring an inmate to exhaust a claim challenging a particular instance of alleged misconduct furthers each of those purposes. Unlike broad challenges to institutional policies, most isolated incident claims, including virtually all excessive force claims, involve deviation from the institution's stated policy. Accordingly, it makes particular sense to require exhaustion, which will give prison officials notification of the violation and an opportunity to correct it. For example, a prison institution has a strong interest in resolving an excessive force claim. If the claim is legitimate, a prison institution has an overriding interest in learning about it at an early stage, so that it can take immediate steps to discipline the abusive guard. *Freeman*, 196 F.3d at 644. While prison institutions typically advance their interest in receiving timely notification by requiring inmates to file administrative grievances within a short period after the incident, *e.g.* J.A. 11 (grievance must be filed within 30 days of the occurrence of discovery of the cause of the grievance); 28 C.F.R. 542.14 (grievance must be filed with 20 days following the date on which the basis for the grievance occurred), applicable statutes of limitation can give inmates years to file suit.

Excessive force claims are also well-suited to administrative resolution. A prison institution may remedy a legitimate claim of excessive force by disciplining the officer involved, retraining the officer, transferring the inmate to a different area of the prison, or issuing a decision that the inmate's complaint is meritorious and the guard's conduct should not be repeated. See *Smith*, 2001 WL 723010, at *3.

Dole) (noting "an alarming explosion in the number of lawsuits filed by State and Federal prisoners"—"from 6,600 in 1975 to more than 39,000 in 1994"); *id.* at 26,553 (Sen. Hatch) (noting that the "vast majority" of the 39,000 non-habeas suits filed by inmates in federal court "are completely without merit," and that "[t]he crushing burden" of the suits "makes it difficult for courts to consider meritorious claims").

Such measures may well satisfy the complaining inmate and eliminate his desire to pursue federal court litigation. *Booth*, 121 S. Ct. at 1823. Alternatively, factual development of the issue and a written decision may persuade the inmate that there is no merit to his claim and dissuade him from filing suit. *Ibid.* In either event, the administrative process reduces the volume of litigation in federal court.

When litigation cannot be avoided, exhaustion of an excessive force claim can better prepare the parties for litigation on the issue and expedite resolution of the matter in court. *Booth*, 121 S. Ct. at 1823. Excessive force claims can be "factually intense," and the administrative process may, "at a minimum," develop the "basics of who-did-what-to-whom." *Smith*, 2001 WL 723010, at *2.

Other particular instance claims, such as claims involving a particular instance of retaliation, or claims involving a particular instance of inadequate medical care, implicate the policies of exhaustion to the same degree. In those cases as well, institutions have an interest in learning about a deviation from institution policy quickly; internal proceedings can remedy the problem or clarify the facts in a way that dissuades the inmate from filing suit; and factual development can assist the parties in presenting the issues that must be resolved by a court.

The Second Circuit nonetheless concluded in *Lawrence*, the second in its series of exhaustion cases, that the purposes of exhaustion are not implicated by particular instance claims. The court reasoned that the purpose of exhaustion is to give prison institutions a chance to change their policies, a purpose "not served when a practice is aimed at one specific inmate rather than the prison population as a whole." 238 F.3d at 186. In subsequent cases, the Second Circuit has repeated that limited rationale for the exhaustion requirement. *Royster*, 2001 WL 388051, at *1; *Marvin*, 2001 WL 686838, at *1.

The Second Circuit has provided no basis for its view that the purpose of the PLRA's exhaustion requirement is limited to giving prison institutions a chance to change their policies. The PLRA responded to a perceived flood of prison litigation, not just suits aimed at changing overall policies. More broadly, exhaustion requirements are typically designed to serve a variety of purposes, including reducing the volume of federal court litigation and facilitating the development of the facts should a dispute reach court. *Weinberger* v. *Salfi*, 422 U.S. 749, 765 (1975); *Parisi* v. *Davidson*, 405 U.S. 34, 37 (1972); *McKart* v. *United States*, 395 U.S. 185, 193-194 (1969).

Moreover, the Second Circuit is mistaken in its view that isolated incidents can never lead to the reassessment of institutional policies. Institutions may view a particular guard's use of excessive force as a symptom of "systemic problems, including poor hiring procedures, insufficient training and supervision, or an inadequate procedure for responding to prison riots or insubordinate behavior by prisoners." *Smith*, 2001 WL 723010, at *2. A report of a particular incident may well prompt a reassessment of those broader policies.

Exhaustion of challenges, whether incident-specific or implicating broader policies, also gives the courts the benefit of institutional expertise. Courts are "ill suited to act as the front-line agencies for the consideration and resolution of the infinite variety of prisoner complaints." *Procunier* v. *Martinez*, 416 U.S. 396, 405 n.9 (1974). The proper response to prison grievances falls squarely within the expertise of prison officials, and, in general, courts owe deference to the solutions chosen by those officials. *Bell* v. *Wolfish*, 441 U.S. 520, 547 n.29 (1979).

C. An Exception To The Exhaustion Requirement For Claims Challenging Particular Instances Of Alleged Misconduct Would Generate Wasteful Litigation

The difficulty of distinguishing between actions challenging particular instances of alleged misconduct and actions challenging systematic prison practices provides yet another reason for rejecting the court of appeals' interpretation. The very effort to determine which cases fall into which category will generate substantial additional work for the courts. Requiring all claims arising from incarceration to be exhausted avoids that difficulty and further advances the PLRA's goal of reducing the amount of judicial resources devoted to prisoner claims.

The exhaustion cases decided by the Second Circuit in the wake of its decision in this case provide an early indication of the additional litigation that the Second Circuit's rule would generate. While the Second Circuit had no difficulty classifying a retaliation claim as a particular instance claim, it has remanded for district courts to consider in the first instance whether the following claims must be exhausted: a claim that an inmate was denied access to his legal documents, *Royster*, 2001 WL 388051, at *2; a claim that an inmate's mail was seized, *Marvin*, 2001 WL 686838, at *1-*2; a claim that a directive promulgated by prison employees abridged an inmate's right to freedom of religion, *ibid*; and a claim that an inmate was denied adequate medical care when prison employees failed to allow him to obtain root canal surgery from a dentist, *ibid.* The Second Circuit has also left open for future litigation "the question of whether exhaustion is required if the challenged conduct is undertaken pursuant to a prison policy which vests discretion in correctional employees to act or not act, *e.g.*, a policy providing that an employee should perform some act if it is 'reasonably' warranted by the circumstances." *Id.* at *3 n.2.

The complaint in this case illustrates that even an excessive force claim may resist easy characterization. Respondent's complaint centers on one specific incident of alleged excessive force. Pet. App. A3. But his complaint also alleges that correction officers subjected him to a sustained pattern of harassment and intimidation because of his perceived friendship with the Governor of the State of Connecticut. *Ibid.* Thus, respondent's complaint, like many inmate complaints, fairly can be characterized as challenging both a systematic practice and a particular instance of alleged misconduct.

The Second Circuit's interpretation thus invites substantial collateral litigation on whether a claim must be exhausted. Having adopted an exhaustion requirement in order to help reduce the crushing burden that prison lawsuits impose on courts, Congress could not have intended for there to be extensive pleadings, hearings, and possibly trials simply to determine whether a claim must be exhausted.

This Court has previously recognized that the attempt to separate particular instance claims from other prison condition claims provokes wasteful litigation. In *Bronson*, the Court noted that its holding that all prison petitions may be referred to magistrates "furthers the policy of the Act because its simplicity avoids the litigation that otherwise would inevitably arise in trying to identify the precise contours of [an] exception for single episode cases." 500 U.S. at 143. The Court added that such an exception "would generate additional work for the district courts because the distinction between cases challenging ongoing conditions and those challenging specific acts of alleged misconduct will often be difficult to identify." *Ibid.* Many prison petitions, the Court explained, "could fairly be characterized as challenging both ongoing practices and a specific act of alleged misconduct." *Id.* at 143-144.

Similarly, in *Wilson*, the difficulty of drawing a distinction between "short-term" or "one-time" prison conditions and "continuing" or "systematic" conditions played a significant role in the Court's rejection of that distinction as a basis for determining whether proof of a culpable state of mind is required to establish an Eighth Amendment violation. 501 U.S. at 300. The Court explained that "[a]part from the difficulty of determining the day or hour that divides the two categories (Is it the same for *all* conditions?), the violations alleged in specific cases often consist of composite conditions that do not lend themselves to such pigeonholing." *Id.* at 301. The Court also "wonder[ed] whether depriving all the individual prisoners who are murderers would suffice; or all the individual prisoners in Cellblock B." *Id.* at 299 n.1. The Court concluded that the proposed distinction "defies rational implementation," *id* at 301, and is not only "unsupportable in principle but unworkable in practice," *id.* at 299 n.1. The practical considerations discussed in *Bronson* and *Wilson* are equally applicable here.

D. Congress Changed The Exhaustion Provision To Broaden Its Scope, And Creating An Exception For Actions Challenging Particular Instances Of Alleged Misconduct Would Contravene That Purpose

Before the PLRA amended Section 1997e(a), a district court had discretion to require a state inmate to exhaust a claim brought pursuant to 42 U.S.C. 1983 if the court determined that exhaustion would be "appropriate and in the interests of justice," and if the State afforded remedies for the claim that were "plain, speedy, and effective." 42 U.S.C. 1997e(a)(1) (1994). Before ordering exhaustion, a court was also required to determine that the state procedures satisfied minimum standards of fairness and effectiveness. 42 U.S.C. 1997e(a)(2) (1994). In addition, rather than ordering a dismissal of the case pending exhaustion, a

court's only option was to continue a case pending exhaustion for a period of not more than 180 days. 42 U.S.C. 1997e(a)(1) (1994). Nonetheless, that exhaustion requirement applied to all actions filed by inmates under Section 1983 and therefore unambiguously included actions challenging particular instances of alleged misconduct. 42 U.S.C. 1997e(a) (1994).

In the PLRA, Congress made substantial changes in Section 1997e(a) to expand the scope and ease the application of the exhaustion requirement. In place of the previous version, Congress substituted a broad and firm mandate that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law" by an inmate "until such administrative remedies as are available are exhausted." 42 U.S.C. 1997e(a) (Supp. V 1999). That provision (1) eliminates the requirement that state remedies must be "plain, speedy, and effective," (2) eliminates the requirement that administrative remedies must satisfy minimum standards of fairness and effectiveness, (3) eliminates a court's discretion to waive exhaustion when it would not be "appropriate" or "in the interests of justice," (4) requires dismissal of an action for failure to exhaust, rather than a continuance for not more than 180 days, and (5) extends exhaustion to claims brought under any federal law. See *Booth*, 121 S. Ct. at 1824-1825 & n.5.

It is "highly implausible" that the Congress that adopted "an obviously broader exhaustion requirement" intended to permit the many inmates who challenge particular instances of alleged misconduct to "skip the administrative process" and go directly to federal court. 121 S. Ct. at 1825. That is particularly true in light of the original version of Section 1997e(a)'s unambiguous application to actions challenging particular instances of alleged misconduct. If the court of appeals' interpretation were correct, it would mean that at the same time that Congress widely expanded the scope of

the exhaustion requirement, it simultaneously dramatically cut back on it.

As the court of appeals noted (Pet. App. A6), the PLRA inserted the phrase "with respect to prison conditions" into Section 1997e(a), and some meaning must be given to that addition. But that phrase can be given meaning without undermining the underlying purpose of the exhaustion requirement's revisions. The phrase "with respect to prison conditions" serves at least one limited but important function: it eliminates the new mandatory exhaustion requirement for claims that concern pre-incarceration incidents, such as an action alleging excessive force by an arresting officer, or an action alleging that a pre-incarceration employer engaged in discrimination in violation of Title VII. In a provision requiring mandatory exhaustion of prison grievance procedures, it would have made little sense to have required exhaustion of such claims. There is no comparable reason for Congress to have excluded actions challenging particular instances of alleged misconduct that occur while an inmate is confined. To the contrary, a principal purpose of prison grievance procedures is to address claims of that kind.

E. The Legislative History Does Not Support An Exception For Particular Instances Claims

The legislative statements made during the course of Congress's consideration of the PLRA also support a broad reading of the exhaustion requirement. In discussing the prisoner lawsuits that prompted the PLRA, the proponents referred to the numerous suits involving isolated incidents, including: the failure to provide sufficient locker space; a defective haircut by a prison barber; the failure of prison officials to invite an inmate to a pizza party; the service of chunky peanut butter rather than creamy; the denial of the use a Game Boy; the issuance of Converse shoes rather than

Reebok or L.A. Gear; a clean-up of a flooded cell that resulted in pinochle cards getting wet; and a search of a cell in which clean and dirty clothes were mixed together. 141 Cong. Rec. at 14,570 (Sen. Dole); *id.* at 26,548 (Sen. Dole); *id.* at 26,553 (Sen. Hatch); *ibid.* (Sen. Kyl); *id.* at 27,042 (Sen. Hatch).

The proponents did not refer directly to excessive force claims. In discussing the need for the PLRA, however, its sponsors could hardly be expected to discuss all the claims that would be subject to exhaustion. In pressing their case for a change in the law, the sponsors understandably selected the most egregious examples of lawsuits filed by inmates. In addition, while no sponsor referred to excessive force claims directly, one of the sponsors referred to the propensity of inmates to file cruel and unusual punishment claims, 141 Cong. Rec. at 14,570 (Sen. Dole), a category that includes excessive force claims. Furthermore, an opponent of the legislation pointed out that excessive force claims, like the claims discussed by the proponents, would be affected by the legislation, *id.* at 27,044 (Sen. Biden), and no proponent contradicted that assertion. Nothing in the legislative history remotely suggests that the sponsors intended to exclude excessive force or other isolated incident claims from the exhaustion requirement's coverage.

F. The Definition Of Prison Conditions In 18 U.S.C. 3626(g) (Supp. V 1999) Supports A Broad Construction of That Term In The Exhaustion Provision

The court of appeals concluded that the definition of "prison conditions" in 18 U.S.C. 3626(g)(2) (Supp. V 1999) supported its interpretation of the exhaustion requirement. Pet. App. A12-A16. That definition is included in a separate section of the PLRA addressed to limitations on prospective relief and provides that, "[a]s used in this section, * * * the term 'civil action with respect to prison conditions' means

any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison." 18 U.S.C. 3626(g)(2) (Supp. V 1999). The court of appeals' reliance on that definition is misplaced. To the extent it is relevant, that definition encompasses particular instances of alleged misconduct and so supports a broad reading of the PLRA's exhaustion requirement. Even if it excluded them, however, it would not affect the construction of the PLRA's separate exhaustion requirement.

1. The definition in Section 3626(g)(2) tracks the distinction drawn by the Court in *Preiser* between actions that inmates may bring pursuant to Section 1983 and actions that they may bring only by filing a petition for a writ of habeas corpus. *Preiser* used the phrase "conditions of their confinement" to describe the former category, 411 U.S. at 498, and "challenge [to] the very fact or duration of the confinement" to describe the latter, *id.* at 499. Because the Section 3626 definition "so clearly parallels" the decision in *Preiser*, it should be interpreted in accordance with that decision. *Bronson*, 500 U.S. at 142.

As previously discussed, *Preiser* used the phrase "conditions of confinement" to include particular instances of alleged misconduct. The term "conditions of confinement" in the Section 3626 definition therefore includes that class of claims as well. The decisions in *Bronson*, and *Wilson*, which adopted similar definitions of "conditions of confinement," reinforce that conclusion. See pp. 10-11, *supra.* The court of appeals concluded that the phrase "conditions of confinement" is not an "apt" way to describe particular instances of alleged misconduct. Pet. App. A10. But that assessment ignores the decisions in *Preiser*, *Bronson*, and *Wilson.* In light of those decisions, the phrase "conditions of confine-

ment," when contrasted with "habeas corpus proceedings challenging the fact or duration of confinement in prison," is a particularly "apt" way to encompass particular instances of alleged misconduct.

2. The phrase "the effects of actions by government officials on the lives of persons confined in prison" (18 U.S.C. 3626(g)(2) (Supp. V 1999)) is even better suited than the phrase "conditions of confinement" to capture challenges to particular instances of alleged misconduct. Its evident purpose is to make doubly sure that a particular instance of alleged misconduct would not be excluded from the definition.

The court of appeals viewed that phrase as too "awkward" to capture particular instances of excessive force. Pet. App. A11. As the Third Circuit has explained, however, particular instances of excessive force affect the lives of inmates in the same way as other adverse prison conditions—"[t]hey make their lives worse." *Booth*, 206 F.3d at 295. There are undoubtedly more precise ways to describe particular instances of excessive force. But Congress had to choose a general phrase that would capture a wide variety of practices not just uses of excessive force. The phrase it selected effectively serves that purpose.

3. The court of appeals also drew on the background and purposes of Section 3626 to interpret its definition narrowly. In particular, the court concluded that, because the primary purpose of Section 3626 is to prevent courts from micromanaging prisons through broad-based decrees directed to high-ranking prison officials, the term "government officials" in Section 3626(g)(2) must refer only to "administrative and policymaking officials," Pet. App. A13, and not to "lower level government employees, such as corrections officers," *id.* at A15; see generally *id.* at A12-A15.

That construction of Section 3626 is mistaken. Congress crafted an expansive definition embracing the actions of all government officials, not just policymaking officials. Com-

pare 50 U.S.C. 403-3(b)(5) (Supp. V 1999) (limiting provision to "policymaking officials"); 18 U.S.C. 2705(a)(1)(B) (limiting provision to "supervisory official"); 42 U.S.C. 2000aa-11(a)(4) (same). Correction officers, no matter what their rank, are still "government officials." See *Crawford-El* v. *Britton*, 523 U.S. 574, 577, 581, 585 (1998). But to the extent that the specific purposes of Section 3626 are relevant, they counsel against transplanting a definition from that section that is expressly limited to defining the term "as used in this section." In other words, even if the Section 3626 definition were construed to exclude particular instances of alleged misconduct for purposes of *that Section*, it would not furnish a basis for construing the PLRA's separate exhaustion provision in the same way. *Bronson*, 500 U.S. at 142 ("the fact that Congress may have used the term 'conditions of confinement' in a different sense in legislation having a different purpose cannot control our interpretation of the language in this Act"); *United States* v. *Cleveland Indians Baseball Co.*, 121 S. Ct. 1433, 1440-1443 (2001) (refusing to give the phrase "wages paid" the same interpretation in the "discrete taxation and benefits eligibility contexts" when the concerns that animated treatment of backpay in the benefits context had "no relevance to the tax side"); see *Vermont Agency of Natural Res.* v. *United States*, 529 U.S. 765, 783 & n.12 (2000) (refusing to apply a section-specific definition of "person" to a different section, where the definition departed from the usual meaning of that term); compare *H.J. Inc.* v. *Northwestern Bell Tel. Co.*, 492 U.S. 229, 239-240 (1989) (adopting a definition applicable to a different section when there was "no reason to suppose that Congress had in mind * * * any more constrained a notion").

G. Neither *McMillian* Nor The General Rule That Claims Under Section 1983 Need Not Be Exhausted Supports The Court Of Appeals' Interpretation

The court of appeals cited two additional considerations in support of its interpretation—the holding in *McMillian* that excessive force claims have a different standard of proof from other cruel and unusual punishment claims, and the general rule that Section 1983 claims do not have to be exhausted. Pet. App. A16-A17. Neither provides a basis for excluding particular instance claims from the scope of the PLRA's exhaustion requirement.

1. In *McMillian*, the Court held that in order to establish that a malicious and sadistic use of excessive force violates the Eighth Amendment, it is not necessary to show that serious harm has resulted. 503 U.S. at 7-11. The Court distinguished excessive force claims from other Eighth Amendment claims, which require such a showing. *Id.* at 8-9. Referring to the other Eighth Amendment claims as "conditions-of-confinement" claims and "medical needs" claims, *id.* at 9, the Court gave the following explanation for the distinction:

> In the excessive force context, society's expectations are different. When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated. This is true whether or not significant injury is evident.

Id. at 9 (citation omitted).

McMillian shows that it is linguistically possible to use the phrase "conditions of confinement" in a way that excludes instances of excessive force and deprivations of medical needs, a point previously noted. See pp. 10-11, *supra*. The question here, however, is not whether it is linguistically possible to use the phrase "prison conditions" in that way. Instead, the question is whether that is what Congress in-

tended in the specific context of the PLRA's exhaustion provision. As we have discussed, the factors bearing on that question overwhelmingly establish that the phrase "prison conditions" in the exhaustion provision encompasses particular instances of misconduct, including particular instances of excessive force. Nothing in *McMillian* suggests otherwise. Indeed, *McMillian*'s holding that a malicious use of excessive force is cruel and unusual without proof of serious harm, while other Eighth Amendment claims require such proof, has no relevance here. The standards for proving a particular claim in court have no bearing on whether it is appropriate to require an inmate to raise that claim in a prison grievance process before filing suit.

The court of appeals nonetheless concluded that *McMillian* is significant in the present context because the purpose of exhaustion is to filter out claims that are "frivolous as to subject matter," and *McMillian* establishes that excessive force claims do not meet that description. Pet. App. A17. The text of the exhaustion provision, however, applies to any action that challenges prison conditions, not just those that challenge conditions that are "frivolous as to subject matter." Compare 42 U.S.C. 1997e(c)(2) (Supp. V 1999) (authorizing dismissal of any claim that "is, on its face, frivolous").

Nor is there any other basis for the court of appeals' gloss on the statute. Requiring exhaustion of claims that are frivolous as to subject matter undeniably advances the purposes of the exhaustion requirement. But, as we have discussed (pp. 12-15, *supra*), exhaustion requirements apply and serve beneficial purposes for legitimate, as well as frivolous, claims. Moreover, claims that are not frivolous as to subject matter can still be frivolous. *McMillian* requires proof of malice, but not serious harm. There is no reason to think that allegations of malice by prisoners can never be frivolous. Because there is no basis for limiting the ex-

haustion requirement to claims that are frivolous as to subject matter, *McMillian* is inapposite here.

2. The court of appeals similarly erred in concluding (Pet. App. A17) that the PLRA's exhaustion requirement should be construed narrowly in order to give "full effect" to the general rule of non-exhaustion in actions brought under 42 U.S.C. 1983. In several cases, this Court has construed an exception to a statute narrowly when a broader construction would defeat the primary policy of the statute. *City of Edmonds* v. *Oxford House, Inc.*, 514 U.S. 725, 731-732 (1995); *Commissioner* v. *Clark*, 489 U.S. 726, 739 (1989); *A.H. Phillips, Inc.* v. *Walling*, 324 U.S. 490, 493 (1945). The PLRA's exhaustion requirement, however, is part of a comprehensive set of measures designed to address the extraordinary problems posed by prisoner lawsuits; it applies expressly to actions under Section 1983 and to actions under any federal law; and it represents a deliberate and dramatic departure from prior law. Moreover, it was a deliberate effort to expand the exhaustion requirement to cover more claims. It is therefore inappropriate to begin with a presumption that Congress intended for the PLRA's exhaustion requirement to be construed narrowly. *Miller* v. *French*, 530 U.S. 327, 340-341 (2000) (refusing to apply a presumption against interpreting statutes to reduce equitable discretion when it was clear that Congress was trying to reduce equitable discretion).

In any event, the primary purpose of Section 1983 is "to provide a remedy for the violation of federal rights," *Crawford-El*, 523 U.S. at 595, and interpreting the exhaustion requirement to apply to actions challenging particular instances of alleged misconduct does not defeat that purpose. Inmates can continue to obtain a remedy for a violation of their federal rights; they simply need to raise their claims in the administrative process first.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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