No. 21-7362

In the
United States Court of Appeals
for the Fourth Circuit

MATTHEW JAMES GRIFFIN,

Plaintiff-Appellant,

v.

NADINE J. BRYANT; P.M. MANNION; ARLENE BURGESS TOODLE; M.A. KHAN; M. BOSSIE; BYRON SCOTT CARTER; UNKNOWN DOE 1, Nurse; UNKNOWN DOE 2, Correctional Officer (aka Dervin),

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of North Carolina

BRIEF OF DEFENDANTS-APPELLEES BRYANT, MANNION, TOODLE, BOSSIE, CARTER, AND UNKNOWN DOES

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CORPORATE DISCLOSURE STATEMENT

I certify, pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, that no appellee is in any part a publicly held corporation, a publicly held entity, or a trade association, and that no publicly held corporation or other publicly held entity has a direct financial interest in the outcome of this litigation.

Dated: April 18, 2022

/s/ Sripriya Narasimhan
Sripriya Narasimhan

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ISSUE PRESENTED

Did the district court correctly grant summary judgment in favor of the appellees because the appellant did not exhaust his administrative remedies as required by the Prison Litigation Reform Act?

INTRODUCTION

Matthew Griffin, a New Mexico resident who is serving a life sentence in New Mexico, came to live in North Carolina prisons in October 2015. He has since returned to New Mexico. In his time in North Carolina, Griffin filed 36 grievances with the North Carolina prison system.

This appeal concerns one grievance Griffin attempted to file (the involuntary-sedation grievance) alleging that the State Defendants refused him ADA-compliant housing despite his diagnosed vision impairment, taunted him when he complained and asked for ADA-compliant housing, and took retaliatory steps to his continued objections by involuntarily sedating him. The State Defendants vehemently deny the truth of these allegations. But this appeal does not depend on the truth or falsity of Griffin's accusations.

Under the Prison Litigation Reform Act (PLRA), a prison resident must exhaust their administrative remedies before filing suit in federal court, and Griffin failed to do so timely here. In particular, he could have, but did not, submit a grievance within 90 days of the alleged incident, as required by North Carolina's grievance policy.

The grievance policy requires that prison residents file an initial grievance within 90 days of the alleged incident.

- After the prison resident files their grievance, prison staff have three days to accept or return the grievance.
- If the grievance is accepted, prison staff have 15 days to respond to the grievance. This is Step 1.
- If the resident does not get relief within 15 days or if the relief is denied, the resident may appeal the grievance to Step 2. If the resident does not get relief within 20 days or if relief is denied at Step 2, the resident may appeal the grievance to Step 3, the final step.

A resident may not have more than one grievance at a time in Steps 1 and 2. However, because of a resident's ability to appeal de facto denials, a resident can always move a grievance through Steps 1 and 2 in no more than 38 days, many days fewer than the 90-day time limit to file a new grievance.

Griffin's argument that the one-grievance-at-a-time policy rendered administrative remedies unavailable to him ignores this simple math. Griffin argues that prison staff's failure to act on a

grievance he filed before he filed his involuntary-sedation grievance, combined with prison staff's improper acceptance of a grievance that Griffin filed after he tried to file his involuntary-sedation grievance, deprived him of administrative remedies for his involuntary-sedation grievance. But Griffin could have promptly appealed the de facto denials of *both* those grievances through Step 1 and Step 2 and *still* had time to file his involuntary-sedation grievance.

Griffin's own failure to promptly pursue an appeal of the first grievance, and to move that grievance through Steps 1 and 2 as the grievance policy permitted him to do, does not mean that the administrative process was a dead end or otherwise unavailable to him. It means that Griffin failed to exhaust his remedies.

Understanding the meaning of "availability" of administrative remedies any other way would allow prison residents to abandon the administrative process before completion and claim that remedies were unavailable to them because their grievances are now time-barred. This would create perverse incentives for prison residents to make an end-run around the strict exhaustion requirements mandated by

Congress in the PLRA. The district court was correct to grant summary judgment to the State Defendants.

STATEMENT OF FACTS[1]

A. The North Carolina Department of Public Safety's Administrative Remedy Procedure Provides a Clear Guide for Pursuing Grievances.

Like many state-prison facilities, the North Carolina Department of Prisons has a procedure (Grievance Policy) that provides prison residents an opportunity to administratively settle grievances in a way that "reduce[s] tension and provide[s] a stable atmosphere by providing formal channels of communication of grievances." JA104.

The Grievance Policy articulates a three-step process for resolving grievances.[2] Under Step 1, the prison resident must submit a written

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[1] On review of summary judgment, this Court views the evidence in the light most favorable to the nonmovant (here, Griffin) and draws all reasonable inferences in his favor. *Harris v. Pittman*, 927 F.3d 266, 272 (4th Cir. 2019). Accordingly, the State Defendants present the facts of this case as Griffin presented them in his complaint. However, the State Defendants vehemently object to the truth of many of the allegations and reserve the right to challenge them at the appropriate time if necessary.

[2] The policy involves two different pathways to resolving grievances, depending on whether the grievance is an emergency or not. JA109-110. The record contains no indication that the grievance at

grievance within 90 days of the alleged incident, JA107, which is accepted, rejected, or returned by the screening officer in three days. JA110. If the screening officer determines that the grievance can be considered, prison officials will complete a formal response within 15 days from the date of acceptance of the grievance. *Id.*

If the resident is not satisfied with the Step 1 decision, they may appeal the decision to Step 2. JA111. Prison officials will complete a formal response to the Step 2 appeal within 20 days from the date of appeal. *Id.*

If the resident is not satisfied with the Step 2 decision, they may appeal the decision to Step 3. JA112. At the completion of Step 3, the resident will have exhausted their administrative remedies.

If, at any time in the remedy process, the resident does not receive a response within the time provided for a formal response, "the absence of a response shall be a denial at that level[,] which the inmate may appeal." JA108. In other words, prison residents always have the ability to advance a grievance through Steps 1 and 2 within a total of 38

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issue here was intended to be filed as an emergency grievance. The State Defendants therefore focus their discussion on the policies relevant to non-emergency grievances.

days (3 days for the screening officer to accept the grievance + 15 days to complete Step 1 review + 20 days to complete Step 2 review).

The Grievance Policy provides that a resident cannot submit a new grievance until a pending grievance has completed Step 2 or has been resolved. JA106. While the existence of a pending grievance at Step 1 or 2 can therefore temporarily prevent a resident from filing a new grievance, the resident will always have the ability to file the new grievance within the 90-day deadline, because, as stated, residents can always advance any pending grievance through Steps 1 and 2 in as few as 38 days.

B. Griffin Fails to File a Timely Grievance Regarding His Allegations Against the State Defendants.

Griffin is a New Mexico resident who is serving a term of life plus 50 years. JA80. On October 9, 2015, Griffin was transferred to a prison in North Carolina under the Interstate Corrections Compact. JA80-81. During his time in the North Carolina prisons, Griffin submitted 36 prison grievances, although many were allegedly returned or not processed. JA81.

On November 27, 2015, Griffin attempted to submit a grievance concerning an alleged incident that occurred that same day. JA119. To

be sure, Griffin's grievance includes allegations of serious misconduct, including that State Defendants failed to provide him with ADA-compliant accommodation, involuntarily sedated him with a benzodiazepine, and refused to provide him with medical attention after he suffered an injury to his shoulder. *Id.* Both the district court's decision and Griffin's opening brief in this Court recite those accusations in detail, based on the allegations in Griffin's complaint. JA155-160. State Defendants vigorously reject Griffin's accusations, and if this case had gone forward, they would have refuted them factually. But the veracity of any of Griffin's allegations is irrelevant to any issue in this appeal. This appeal concerns only whether Griffin's case was properly dismissed because of his failure to exhaust administrative remedies as required by the PLRA.

On November 30, 2015, prison officials returned Griffin's involuntary-sedation grievance to him because there was another pending grievance being processed in Step 1 that Griffin had previously filed. JA119. Specifically, on October 27, 2015, Griffin filed a grievance, asking to be placed on a Kosher diet (the Kosher-diet grievance). Suppl. JA4. That grievance was accepted on October 29,

2015. JA116; Suppl. JA2. On October 30, Griffin was placed on a Kosher diet, but he did not dismiss his grievance. JA116; Suppl. JA2. Under the Grievance Policy, the Kosher-diet grievance should have been understood as de facto denied at Step 1 beginning on November 13, and Griffin could have appealed it right on that date. *See* JA110. Then, prison officials would have had 20 days from the date of the appeal to Step 2 to provide a formal response. *See* JA108. Had Griffin appealed the de facto denial of the Kosher-diet grievance at Step 1 on November 13, under the policy, the Kosher-diet grievance should have been understood as de facto denied at Step 2 beginning on December 3—well in advance of Griffin's 90-day deadline of February 25, 2022 to re-file his involuntary-sedation grievance.

But instead of taking the appeal or dismissing his grievance because he had already received a Kosher diet regimen, the Kosher-diet grievance remained in the system at Step 1.

On February 5, 2016, the Kosher-diet grievance was forwarded to Step 2. Suppl. JA5. At this time, under the policy, the Kosher-diet grievance should have been understood as de facto denied at Step 2

beginning on February 25—which was when prison officials forwarded the grievance to Step 3. Suppl. JA2.

While the Kosher-diet grievance remained in the system through Step 1 and Step 2, on November 27, Griffin attempted to submit his involuntary-sedation grievance, but that grievance was returned to Griffin on the basis of the one-at-a-time rule. JA119.[3]

On January 4, 2016, Griffin filed yet another grievance alleging inadequate medical care from a skin condition (the inadequate-care grievance). JA133. Even though the Kosher-diet grievance was still pending in Step 1, the inadequate-care grievance was accepted on January 6. *Id.* Under the policy, the inadequate-care grievance should have been understood as de facto denied at Step 1 beginning on January 21. *See* JA110. Griffin could have appealed his inadequate-care grievance at that time, and if he had done so, prison officials would

[3] Between the filing of his Kosher-diet grievance and his involuntary-sedation grievance, Griffin attempted to file another grievance on November 16, 2015, alleging that prison officials had refused him adequate light. JA127. This inadequate-light grievance was returned to Griffin due to the pendency of his Kosher-diet grievance, *id.*, and he never attempted to re-file it.

have had 20 days, until February 10, to complete the Step 2 review. *See* JA108.

In fact, the inadequate-care grievance was forwarded to Step 2 by prison officials on either January 12 or January 21, 2016 (the formal response bears both dates). JA137. Prison officials were unable to process this grievance through Step 2 to Step 3 until February 24. JA139. Even assuming the date of appeal from Step 1 was January 21, the inadequate-care grievance should have been understood as de facto denied at Step 2 beginning on February 10—15 days before the deadline to re-file the involuntary-sedation grievance.

A chronology of administrative review through Step 2 of all three of these grievances is outlined below:

Date	**Event**
10/9/2015	Griffin arrives in North Carolina Department of Public Safety custody.
10/27/2015	Kosher-diet grievance submitted to Step 1.
10/29/2015	Kosher-diet grievance accepted at Step 1.
10/30/2015	Placed on Kosher diet.
11/13/2015	Kosher-diet grievance ripe for appeal to Step 2.

11/27/2015	Involuntary-sedation grievance submitted to Step 1.
11/30/2015	Involuntary-sedation grievance returned because of one-at-a-time policy.
12/3/2015	Kosher-diet grievance ripe for appeal to Step 3 (had Griffin pursued his appeal of this grievance from Steps 1 and 2 promptly).
1/4/2016	Inadequate-care grievance submitted to Step 1.
1/6/2016	Inadequate-care grievance accepted at Step 1.
1/21/2016	Inadequate-care grievance ripe for appeal to Step 2.
2/5/2016	Kosher-diet grievance forwarded to Step 2 by prison officials.
2/10/2016	Inadequate-care grievance ripe for appeal to Step 3 (had Griffin pursued his appeal of this grievance from Steps 1 and 2 promptly).
2/24/2016	Inadequate-care grievance forwarded to Step 3 by prison officials.
2/25/2016	Kosher-diet grievance forwarded to Step 3 by prison officials.
2/25/2016	Deadline to file involuntary-sedation grievance for administrative exhaustion.

Between March 2016 and January 2019, Griffin filed at least 12 more grievances, though Griffin does not claim any inability to seek redress as a result of the one-at-a-time policy related to those

grievances. Suppl. JA16, 33-36, 40-42, 58-59, 68, 73-75, 94-95, 101-103, 107-108, 118, 122-123, 129.

C. The District Court Grants Summary Judgment.

The district court converted the State Defendants' and Khan's motions to dismiss for failure to exhaust administrative remedies to summary judgment motions and granted both. *See* JA150. After describing the PLRA's strict exhaustion requirements, the district court noted that the only exception to mandatory exhaustion is when the administrative remedy procedure is unavailable to the prison resident. JA162-163. The court held that the policy requiring grievances to be filed one-at-a-time does not render the Grievance Policy unavailable altogether because it does not make the grievance procedure operate as a dead end, render it opaque, or provide an avenue for prison officials to thwart prison residents from taking advantage of the grievance process. JA164.

SUMMARY OF ARGUMENT

The district court correctly granted summary judgment in favor of the State Defendants because Griffin failed to exhaust his administrative remedies as required by the PLRA. In particular,

Griffin failed to timely submit his involuntary-sedation grievance within 90 days of the alleged incident as required by North Carolina's grievance policy.

The PLRA requires prison residents filing claims in federal court related to prison conditions to exhaust all available administrative remedies first. An administrative remedy is "available" when it does not lead to a dead end, is not opaque, and is not one that prison officials, through machinations or obstructions, obscure from a resident. In this case, the North Carolina Department of Public Safety's grievance policies provide those available remedies.

The Grievance Policy ensures that administrative remedies are readily and clearly available to prison residents by providing a clear pathway for relief. Specifically in this case, the Grievance Policy did not shunt Griffin to a dead end and was not used by State Defendants to obscure access by Griffin.

It was Griffin who failed to promptly pursue his appeals in a manner that ensured that he would exhaust his remedies. Griffin filed his Kosher-diet grievance, but prison officials could not process that grievance within the time allotted. Instead of appealing the de facto

denial, as the Grievance Policy allowed, Griffin allowed the grievance to languish. As a result, when Griffin attempted to file the involuntary-sedation grievance, he was prevented from doing so because he had failed to appeal his Kosher-diet grievance. Then, instead of waiting to re-file the involuntary-sedation grievance, he filed a different grievance arising out of an even later event (the inadequate-care grievance)—which was accepted, even though the first grievance had yet to be processed. Prison officials could not process the inadequate-care grievance within the time allotted either. Again, Griffin did not appeal. Again, Griffin allowed this last grievance to languish.

By filing serial grievances, letting later-filed grievances leapfrog the grievance at issue here, and failing to promptly appeal earlier grievances, Griffin shut himself out of the administrative process.

Now, Griffin claims that the Grievance Policy was unavailable to him and that is why his failure to exhaust his administrative remedies should be overlooked. But the Grievance Policy bears no hallmarks of an unavailable remedy. The Policy does not function as a dead end—indeed, it is Griffin's failure to promptly pursue appeals of earlier-filed grievances that apparently served to keep the grievance at issue here

out of adjudication. And there is no evidence that the State Defendants thwarted Griffin from pursuing the involuntary-sedation grievance at issue here. It was Griffin who had full control over staggering his grievances.

The district court's order should be affirmed.

STANDARD OF REVIEW

This Court applies de novo review to a grant of summary judgment for failure to exhaust administrative remedies. *Moss v. Harwood*, 19 F.4th 614, 621 (4th Cir. 2021); *see also Talbot v. Lucy Corr Nursing Home*, 118 F.3d 215, 218 (4th Cir. 1997) (whether a plaintiff properly exhausted all administrative remedies is a question of law reviewed de novo).

ARGUMENT

I. EXHAUSTION IS A MANDATORY PRE-CONDITION TO FILING SUIT.

The PLRA prohibits actions related to prison conditions under section 1983 unless "such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). This requirement was adopted by Congress in direct response to the overwhelming number of frivolous civil cases filed in federal courts nationwide. *Jones v. Bock*, 549 U.S.

199, 203-04 (2007). The exhaustion requirement was intended to reduce the quantity and improve the quality of prisoner lawsuits by, among other benefits, producing a useful administrative record for review. *Woodford v. Ngo*, 548 U.S. 81, 94-95 (2006).

The exhaustion requirement was also intended to ensure mandatory compliance—all available remedies must be exhausted, and those remedies need not meet any federal standards. *Porter v. Nussle*, 534 U.S. 516, 524 (2002).

The mandatory nature of the exhaustion requirement is made clear when comparing it to the previous version of the statutory requirement. Under the earlier provision, exhaustion was only required if the state provided "plain, speedy, and effective" remedies that met certain federal minimum standards and the court believed exhaustion was "appropriate in the interests of justice." *Ross v. Blake*, 578 U.S. 632, 640-41 (2016). By enacting the operative version of the exhaustion requirement, Congress made an explicit decision to sharply limit the circumstances in which courts could excuse a failure to exhaust administrative remedies in prison-conditions cases. *See Woodford*, 548

U.S. at 85 (explaining that the PLRA made exhaustion "mandatory," rather than something "left to the discretion of the district court").

II. THE DISTRICT COURT WAS CORRECT TO ENTER SUMMARY JUDGMENT.

The district court correctly entered summary judgment in this case because the Grievance Policy was clear and fully available to Griffin. It did not operate as a dead end and no prison official engaged in efforts to thwart Griffin from following the Grievance Policy to pursue his administrative remedies.

The Grievance Policy was available to Griffin—and, under the PLRA, he should have exhausted the procedures in it. A remedy is "available" when the grievance procedures allow "the possibility of some relief," "whether or not the possible responses cover the specific relief the prisoner demands." *Booth v. Churner*, 532 U.S. 731, 737-39 (2001). In other words, the grievance procedures must only be "accessible" and "capable of use for the accomplishment of a purpose." *Ross*, 578 U.S. at 642.

There are three specific circumstances in which grievance procedures are not "available" within the meaning of the PLRA: (1) "when (despite what regulations or guidance materials may promise)

it operates as a simple dead end" (2) when the procedures are "so opaque that it becomes, practically speaking, incapable of use" because "some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it," or (3) "when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id.* at 643-45.

None of these circumstances is present here.[4]

Griffin could—and should—have availed himself of the Grievance Policy. Griffin insists that administrative remedies were only hypothetically available to him because there was allegedly never a time where he could have filed his involuntary-sedation grievance without violating North Carolina's one-at-a-time policy. Br. 18-19.

But, as shown below, that is incorrect for three reasons. First, Griffin had ample time to appeal the de facto denials of his grievances to ensure that he was able to re-file his involuntary-sedation grievance in time. Second, Griffin could have dismissed moot grievances that had

[4] Griffin does not argue that the Grievance Policy was so opaque that he did not know how to navigate it. Accordingly, State Defendants limit their discussion to the two arguments raised by Griffin: that the procedures were a dead end, and that Griffin was thwarted from accessing them.

already been resolved. And third, Griffin could have staggered the adjudication of his grievances to prevent grievances about later events from leapfrogging grievances about earlier ones. Any of these options would have allowed Griffin to process his involuntary-sedation grievance. And none of these options serve to operate as a dead end or thwart his access to the grievance procedures.

A. The Grievance Policy Did Not Operate as a Dead End.

The Grievance Policy did not operate as a dead end to Griffin's claim. Griffin insists that he was unable to exhaust his involuntary-sedation grievance because the prison policy "shut his claim out from the process indefinitely until another shut it out entirely." Br. 21. Not so.

A grievance procedure operates as a dead end where "officers [are] unable or consistently unwilling to provide any relief to aggrieved inmates." *Ross*, 578 U.S. at 643. For example, courts have held that grievance procedures operate as a dead end if a prison informs a resident of the grievance procedures only in English when the resident does not speak English. *Ramirez v. Young*, 906 F.3d 530, 537-38 (7th Cir. 2018). Or, as this court suggested, where a prison's policies require

residents to mail appeals to grievances to an address nowhere to be found in the policies. *Custis v. Davis*, 851 F.3d 358, 363 (4th Cir. 2017). Or even as the Supreme Court indicated in *Ross*, when a prison's policies require a different investigative procedure altogether to adjudicate claims such that the resident cannot ever access the grievance procedure. *Ross*, 578 U.S. at 647-48.

In this case, however, it was not the Grievance Policy that failed to provide relief to Griffin, but rather Griffin's failure to promptly pursue appeals of intermediary decisions related to his grievances. As described above, any prison resident has the ability to push any grievance through Steps 1 and 2 within a total of 38 days—well within the 90-day deadline to file a new grievance. Griffin could have done so here with respect to *both* his Kosher-diet grievance and his later-filed inadequate-care grievance.

Federal courts across the country—including this Court and courts in several sister circuits—have held that administrative exhaustion requires prison residents to promptly pursue appeals in accordance with prison policies. In general, prison residents may not argue that remedies are unavailable where they fail to appeal a de facto

denial of a grievance if the policy offers them an opportunity to do so. *See, e.g.*, *Bargher v. White*, 928 F.3d 439, 447 (5th Cir. 2019) (holding failure to exhaust where petitioner declined to move to next step of the grievance process when policy allowed for appeal after expiration of response time limits); *Turner v. Burnside*, 541 F.3d 1077, 1084 (11th Cir. 2008) (suggesting the same); *Cross v. Horton*, 80 F. App'x 430, 432 (6th Cir. 2003) (same); *Jernigan v. Stuchell*, 304 F.3d 1030, 1032-33 (10th Cir. 2002) (same); *Gibson v. Goord*, 280 F.3d 221, 223 (2d Cir. 2002) (holding failure to exhaust when petitioner failed to appeal after receiving no response to the first step of the grievance procedure); *cf. Spires v. Harbaugh*, 438 F. App'x 185, 186-87 (4th Cir. 2011) (observing that petitioner's appeal of de facto denial in accordance with policy was proper and required to demonstrate exhaustion).

At bottom, prison residents may not argue that they have exhausted their administrative remedies "by, in essence, failing to employ them" and then, when they may be time-barred from pursuing these remedies, claiming that "[the remedies] are exhausted by default." *Jernigan*, 304 F.3d at 1033. A contrary interpretation would "trivialize

the Supreme Court's holdings in *Booth* and *Porter* that exhaustion is now mandatory." *Id.*

But that is precisely what Griffin is attempting to do here. Griffin failed to employ the remedies available in time and is now claiming that he is exempted from the exhaustion requirement. Griffin is right that the Grievance Policy requires prison residents to wait until pending grievances have completed Step 2 review or have been resolved before being able to file new grievances. Br. 8; JA106. Griffin is also right that he filed his Kosher-diet grievance on October 27, 2015, *see* JA4, but this grievance did not get forwarded to Step 3 until February 25—the same day as the deadline for Griffin to re-file the involuntary-sedation grievance, Br. 9-10. But Griffin is wrong that this sequence of events somehow created a dead end preventing him from being able to file the involuntary-sedation grievance.

According to the Grievance Policy, Griffin could have appealed the Kosher-diet grievance to Step 2 beginning on November 13 because the absence of a response within 15 days of acceptance of the grievance should have been considered a de facto denial. JA108. And under the Grievance Policy, prison officials would have had 20 days from the date

of the appeal to Step 2 to provide a formal response. JA108. Had Griffin appealed the de facto denial of the Kosher-diet grievance at Step 1 on November 13, under the policy, the Kosher-diet grievance should have been understood as de facto denied at Step 2 beginning on December 3, 2016. Had Griffin pursued his appeals expeditiously, the Kosher-diet grievance would have been processed through Step 2 well in excess of two months before the deadline to re-file his involuntary-sedation grievance.

Griffin's failure to promptly pursue his appeals (or dismiss his grievance altogether) is more perplexing in light of the fact that, on October 30, 2015—three days after he filed his Kosher-diet grievance—he received the Kosher diet he requested, which should have mooted his grievance. JA116; Suppl. JA2.

The fact that prison officials accepted Griffin's inadequate-care grievance on January 6, 2016, even while the Kosher-diet grievance was pending, does not change matters. JA133.

Again, according to the Grievance Policy, Griffin could have appealed the inadequate-care grievance to Step 2 beginning on January 21 because the absence of a response within 15 days of acceptance of the

grievance should have been considered a de facto denial. JA108. Here, however, the inadequate-care grievance was forwarded to Step 2 by prison officials on either January 12 or January 21, 2016 (the formal response bears both dates). JA137. And under the policy, prison officials would have had 20 days from the date of the appeal to Step 2 to provide a formal response. JA108. Even assuming the date of appeal was January 21, under the Grievance Policy, the inadequate-care grievance should have been understood as de facto denied at Step 2 beginning on February 10—still giving Griffin 15 days to re-file his involuntary-sedation grievance.

Contrary to Griffin's contentions, the one-at-a-time policy for filing grievances never shut him out of timely re-filing his involuntary-sedation grievance. It was Griffin's own failure to promptly pursue appeals of his multiple prior grievances that did so.

Griffin maintains that *Ross* requires that this Court remand this case for further factfinding and adjudication. Br. 21-22. While the underlying allegations in *Ross* bear some resemblance to the underlying allegations in Griffin's complaint, that is where the similarities end. The grievance policy in *Ross*—unlike the one here—was plagued by

confusion about whether the procedures actually offered relief to the prison resident or whether a separate investigation foreclosed that possibility and whether those procedures were knowable. 578 U.S. at 648.

Here, it is clear that the Grievance Policy *did* provide an avenue for relief and appeals and that it was clearly laid out in the policy. As federal courts have consistently held, Griffin's failure to pursue his appeals to the point where he was time-barred from re-filing his involuntary-sedation grievance does not now allow him to claim that the policy functioned as a dead end or that he is exempted from the requirement to exhaust his administrative remedies. *See, e.g.*, *Jernigan*, 304 F.3d at 1033.

B. Griffin Was Not Thwarted From Availing Himself of the Grievance Procedure.

Griffin also argues that the State Defendants thwarted his ability to access the Grievance Policy because (1) they accepted his inadequate-care grievance while his Kosher-diet grievance was pending (even after they rejected his involuntary-sedation grievance) and (2) they took "too long to process and respond to his pending claims." Br. 24-33.

Both of these charges are misplaced because the Grievance Policy does not allow prison officials to control the timing of filing grievances and appealing them. Rather, it is the prison resident who maintains control of how long it takes to process grievances because it is the resident who has the automatic right to appeal a de facto denial after a set number of days at each Step. Therefore, there is no way that the State Defendants could have blocked Griffin from re-filing his involuntary-sedation grievance.

Griffin also asserts in a footnote that the State Defendants intentionally blocked Griffin from re-filing his involuntary-sedation grievance. Br. 31 n.5. There is no evidence in the record to support such an inference—especially when it was Griffin who had the ability to pursue his involuntary-sedation grievance and failed to do so.

An administrative remedy is unavailable and need not be exhausted when prison administrators thwart residents from taking advantage of the process through "machination, misrepresentation, or intimidation." *Ross*, 578 U.S. at 644. In general, the governing standard has been whether a prison resident, through no fault of their own, is prevented from accessing the grievance procedures by prison

officials tripping up residents. *Hill v. Haynes*, 380 F. App'x 268, 270 (4th Cir. 2010). For example, courts have found that petitioners have been thwarted from accessing the grievance process where prison employees refuse to provide them with the necessary forms, *Mitchell v. Horn*, 318 F.3d 523, 529 (3d Cir. 2003), where prison employees refuse to submit grievances that are filled out by petitioners, *Myles v. Edwards*, 813 F. App'x 130, 131 (4th Cir. 2020), where prison employees make "serious threats of substantial retaliation against [a petitioner] for lodging or pursuing in good faith a grievance," *Turner,* 541 F.3d at 1085, and where prison employees mislead petitioners about the grievance process and the petitioner relies on that information, *Townsend v. Murphy*, 898 F.3d 780, 783-84 (8th Cir. 2018).

Here, however, there is no evidence that the State Defendants did anything to trip up Griffin, give Griffin false information about the grievance process, forbid Griffin from filing a grievance, or threaten him with retaliation or retribution for filing a grievance. This case is one where Griffin failed to take the steps necessary to exhaust his own remedies.

1. The Filing of the Inadequate-Care Grievance Bore No Impact on Griffin's Ability to Re-File the Involuntary-Sedation Grievance.

Griffin insists that by accepting the inadequate-care grievance while the Kosher-diet grievance was still pending through Steps 1 and 2, State Defendants blocked Griffin's ability to timely re-file his involuntary-sedation grievance. Br. 27. This charge is untrue. Again, there is no scenario under which Griffin's previously filed grievances would have necessarily blocked his involuntary-sedation grievance for more than 38 days. Had Griffin promptly appealed his Kosher-diet grievance through Steps 1 and 2 in accordance with the Grievance Policy, he would have been able to process that grievance through Step 2 by December 3—more than two months before the deadline to re-file his involuntary-sedation grievance. *See supra* pp. 8-12. And even though the inadequate-care grievance was accepted while the Kosher-diet grievance was pending, had Griffin appealed the inadequate-care grievance through Steps 1 and 2 in accordance with policy when he was able to, he would have been able to process that grievance through Step 2 by February 10—15 days before the deadline to re-file the involuntary-sedation grievance. The State Defendants have no ability

to stop Griffin from pursuing these appeals, nor is there any evidence in the record to suggest that they even tried to do so.

Moreover, Griffin's complaints ring particularly hollow in light of the fact that *he* had the power and authority to decide what grievances he wanted to file at what time. The policy is clear about the restrictions on a prison resident's ability to file a grievance: the grievance must be filed within 90 days of the incident that prompts the filing and there can only be one grievance being processed through Step 2 at a time. JA106-107. Within those restrictions, it is Griffin's responsibility to exercise his judgment about sequencing his grievances such that they can be processed. That Griffin opted to file his inadequate-care grievance instead of waiting to re-file the involuntary-sedation grievance (particularly when the alleged events leading to the inadequate-care grievance occurred more than five weeks after the alleged events leading to the involuntary-sedation grievance) is a choice that he made as the resident—and one that the Grievance Policy does not allow officials to micromanage. Griffin cannot claim that he was

thwarted by prison officials when he was the one in sole control of the schedule for taking appeals in pending grievances and filing new ones.[5]

2. No "Timeframe Violations" Affected Griffin's Ability to Timely Re-File His Involuntary-Sedation Grievance.

Griffin next claims that the time it took for prison officials to process his multiple grievances effectively thwarted him and left him without remedy. The internal processing time, however, could not have stopped Griffin from pursuing timely appeals.

Griffin is correct that the Grievance Policy indicates that prison officials should deliver a formal response to Step 1 grievances within 15 days of acceptance and a formal response to Step 2 grievances within 20 days of appeal, which translates to an approximately 36-day window to process grievances through Steps 1 and 2 (15 days at Step 1 + 24 to appeal + 20 days at Step 2). JA108; Br. 29 n.4. But prison officials

[5] That Griffin was in full control of sequencing the adjudication of his grievances is part of what makes his credit-card rebate example inapposite. Br. 17-18. In his example, the processing of the rebate is entirely outside the customer's control. Here, however, Griffin has control over appealing his grievances and sequencing the filing of new ones.

were unable to process the Kosher-diet and inadequate-care grievances within this timeframe.

That is not the end of the story, however. Anticipating that prison officials may not be able to always timely process grievances, the Grievance Policy allows residents to automatically appeal grievances to the next step if prison officials do not provide formal responses within the specified time periods. JA107-108. This allows prison residents to decide, for themselves, whether they should wait for out-of-court resolutions of their grievances or whether they would prefer to appeal de facto denials. But at no point does the time it takes prison officials to process grievances affect the substantial procedural rights of residents. The facts from Griffin's own case illustrate the innate flexibility offered by the Grievance Policy.

Between October 9, 2015 (when Griffin first came to North Carolina) and January 6, 2016 (when Griffin filed the inadequate-care grievance), Griffin filed four grievances, two of which were returned because of already-pending grievances.

Griffin could have sequenced the filing of his grievances by following any one of these three paths: (1) He could have dismissed his

Kosher-diet grievance once he was provided a Kosher diet three days after he first filed this grievance. This would have taken the grievance out of the queue, allowing Griffin to file the involuntary-sedation grievance at the time he originally tried to. (2) Griffin could have prioritized his grievances to file (or re-file) them in the order in which they occurred. Instead of filing the inadequate-care grievance in January, then, Griffin could have re-filed his involuntary-sedation grievance before filing the inadequate-care grievance. (3) He could have timely appealed both the Kosher-diet and inadequate-care grievances to ensure that he could have filed the involuntary-sedation grievance before time to file had expired.

These paths would have allowed Griffin to timely re-file his involuntary-sedation grievance. Importantly, none of these paths involve the actions of any prison officials. And there is no evidence in the record that the State Defendants took any action to interfere with any of these suggested paths. Accordingly, the State Defendants could not have thwarted Griffin from timely re-filing the involuntary-sedation grievance by delaying decisions on pending grievances because the

ability to appeal was always in Griffin's hands—not the State Defendants'.

C. Griffin Cannot Be Excused for Failing to Help Himself.

The corollary to the rule that prison officials cannot place insurmountable barriers between a resident and grievance procedures is the rule that prison residents cannot be excused for failing to help themselves by taking advantage of grievance procedures.

To properly exhaust administrative remedies, prison residents must "complete the administrative review process *in accordance with the applicable procedural rules*." *Woodford*, 548 U.S. at 88 (emphasis added). "[I]t is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion." *Jones*, 549 U.S. at 218. To satisfactorily complete the administrative review process in accordance with the prison's policy, a prison resident cannot "abandon the process before completion and claim that he has exhausted his remedies or that it is futile for him to do so because his grievance is now time-barred under the regulations." *Williams v. Norton*, 23 F. App'x 396, 397 (6th Cir. 2001) (quoting *Hartsfield v. Vidor*, 199 F.3d 305, 309 (6th Cir. 1999). In other words, proper exhaustion of administrative remedies

"means using all steps that the agency holds out, and doing so properly . . . [in] compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." *Woodford*, 548 U.S. at 90-91 (internal citations and quotations omitted).

This Court has underscored that administrative remedies remain "available" so long as they only require that prison residents take advantage of the spectrum of remedies available to them before filing a lawsuit. In *Moore v. Bennette*, a petitioner filed a second grievance as an emergency grievance, even though he had a prior grievance pending. 517 F.3d 717, 729 (4th Cir. 2008). The second grievance was returned because prison officials determined that it was not an emergency grievance and could not be filed while another grievance was pending. *Id.* This Court held that the petitioner had "no excuse for not resubmitting the [second] grievance" after the earlier grievance had been processed. *Id.* at 730. Because the petitioner had failed to do so, he had failed to exhaust his available remedies. *Id.* Just as in *Moore*, Griffin could have chosen to promptly pursue his appeals and exhaust

his remedies here. But, having failed to do so, he cannot now complain that those remedies were unavailable to him. *Williams*, 23 F. App'x at 397.

Griffin contends that *Moore* is inapplicable because this Court did not address the question of availability of remedies and the grievance procedure was different from the one in place now. Br. 34-35. But these objections are irrelevant to this Court's analysis in *Moore*. The relevant point in *Moore* is that a prison resident has the obligation to take advantage of prison administrative remedies and pursue them entirely—without abandoning them—before filing a lawsuit. This is true regardless of what the particular policy requires. Here, Griffin did not do so. He cannot now argue that the Grievance Policy was unavailable because he chose not to pursue the remedies provided.

CONCLUSION

The State Defendants respectfully request that the Court affirm the district court's order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 18th day of April, 2022, I filed the foregoing brief with the Clerk of Court using the CM/ECF system, which will automatically serve electronic copies on all counsel of record.

/s/ Sripriya Narasimhan
Sripriya Narasimhan

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains {6,601} words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) & (6) because it has been prepared in a proportionally spaced typeface: 14-point Century Schoolbook font.

/s/ Sripriya Narasimhan
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