IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

AARON D. ELLIS, *Plaintiff-Appellant*, v. CHARLES T. RETTIG, et al., *Defendants-Appellees*.	Case No. 22-6401 On Appeal from the U.S. District Court for the Western District of Virginia Case No. 7:22-cv-00062
DWAYNE D. YOUNG, *Plaintiff-Appellant*, v. CHARLES T. RETTIG, et al., *Defendants-Appellees*.	Case No. 22-6402 On Appeal from the U.S. District Court for the Western District of Virginia Case No. 7:22-cv-00063
VINCENT SPINNER, *Plaintiff-Appellant*, v. CHARLES T. RETTIG, et al., *Defendants-Appellees*.	Case No. 22-6422 On Appeal from the U.S. District Court for the Western District of Virginia Case No. 7:22-cv-00064

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INTRODUCTION

The Supreme Court has given clear guidance to courts tasked with interpreting the Prison Litigation Reform Act: accept what Congress said in the PLRA, but do not read in what Congress did not. In particular, the Court has made clear that judges should not read the PLRA to alter the usual operation of Federal Rules of Civil Procedure, unless Congress explicitly communicated an intent to do so. *See Jones v. Bock*, 549 U.S. 199, 220-24 (2007). Yet that is exactly what the district court did here. Rather than doing the analysis Rule 20 requires when deciding whether multiple "persons" can proceed jointly as plaintiffs, the district court came up with a prisoner-specific rule barring joinder, purportedly derived from the PLRA. That's precisely what *Jones* says courts cannot do.

In so doing, the district court split from three of this Court's sister circuits, and went further than any other circuit. It looked to the Eleventh Circuit's decision in *Hubbard v. Haley*, 262 F.3d 1194, 1197-98 (11th Cir. 2001), but that case only concluded that prisoners proceeding *in forma pauperis* cannot proceed jointly. Plaintiffs here, however, did not proceed *in forma pauperis*. And three other circuits have held that even *in forma pauperis* prisoners can proceed jointly. *See Hagan v.*

Rogers, 570 F.3d 146, 154-56 (3d Cir. 2009); *Talley-Bey v. Knebl*, 168 F.3d 884, 887 (6th Cir. 1999); *In re Prison Litig. Reform Act*, 105 F.3d 1131, 1137-38 (6th Cir. 1997); *Boriboune v. Berge*, 391 F.3d 852, 854 (7th Cir. 2004). In contravening the Supreme Court's instructions and the weight of circuit authority, the district court violated the plain text of the PLRA, which is silent on joinder, and Rule 20, which unequivocally allows all "persons"—prisoners and non-prisoners alike—to join as plaintiffs. And the district court's other reasons for denying joinder—general stereotypes about the difficulties prisoner-plaintiffs might face and an unwarranted assumption that one of the plaintiffs was serving as a "knight errant" for the others—fare no better.

Kevin Ballance, Aaron Ellis, Vincent Spinner, and Dwayne Young jointly filed suit *pro se*, each raising the same straightforward claim about the Internal Revenue Service's withholding of stimulus payments from prisoners. But the district court disclaimed any specific inquiry into the appropriateness of joinder in this particular case, with these particular plaintiffs. Instead, it severed Mr. Ellis, Mr. Spinner, and Mr. Young from the original action and dismissed their claims based on its mistaken view that prisoners are categorically barred from joinder under

the PLRA. Because the district court effectively nullified Rule 20 for *pro se* prisoners, its dismissal of Plaintiffs' claims cannot stand. This Court should reverse its decision and remand for Plaintiffs to jointly litigate their claims.

JURISDICTIONAL STATEMENT

Kevin Ballance, Aaron Ellis, Vincent Spinner, and Dwayne Young jointly filed an action under 42 U.S.C. § 1983. JA5. The district court had jurisdiction under 28 U.S.C. § 1331. Before serving defendants, the district court severed Mr. Ellis, Mr. Spinner, and Mr. Young from the original action and gave them twenty days to proceed individually. JA32.

Plaintiffs chose not to amend and instead to stand on their original complaint. *See Bing v. Brivo Sys., LLC*, 959 F.3d 605, 611-15 (4th Cir. 2020). On March 2, 2022, the court dismissed their respective cases. JA67-68; JA86-87; JA105-06. Mr. Ellis, Mr. Spinner, and Mr. Young timely noticed this appeal on April 7, 2022. JA69; JA88; JA107. Because the Plaintiffs "elect[ed] to stand on [their] complaint," this Court has jurisdiction over their appeal under 28 U.S.C. § 1291. *Bing*, 959 F.3d at 610-15.

The Third and Seventh Circuits found jurisdiction in virtually identical circumstances. *See Hagan*, 570 F.3d at 151-52; *Boriboune*, 391 F.3d at 853-54. In both cases, as in this one, the district court refused to allow incarcerated *pro se* plaintiffs to proceed jointly, believing that the PLRA categorically barred joinder. *Hagan*, 570 F.3d at 150; *Boriboune*, 391 F.3d at 853-54. There, as here, the plaintiffs chose to stand on their complaints rather than proceed individually. *Hagan*, 570 F.3d at 151-52; *Boriboune*, 391 F.3d at 853-54; *see also Boriboune v. Berge*, No. 04-0015, 2004 WL 502033, at *1, *7 (W.D. Wis. Mar. 8, 2004) (ordering dismissal without prejudice after denying joinder). In both cases, the circuit courts found appellate jurisdiction. *Hagan*, 570 F.3d at 151-52; *Boriboune*, 391 F.3d at 853-54, 856.[1] As *Hagan* explained, appellate jurisdiction is appropriate in this situation because the district court "effectively ruled the joint complaint legally inadequate, and subsequent individual pleading by [plaintiffs] would have effectively conceded the joinder issue." *Hagan*, 570 F.3d at 152. That is, "jurisdiction exists under § 1291 because

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[1] *See* Order to Show Cause Why Appeal Should Not Be Dismissed for Lack of Jurisdiction, *Boriboune*, 391 F.3d 852 (No. 04-1847); Order Accepting Jurisdiction and Proceeding to Briefing, *Boriboune*, 391 F.3d 852 (No. 04-1847).

there is nothing [plaintiffs] can do to cure the defect in [their] dismissed complaint." *Id.*

ISSUES PRESENTED

1. Did the district court err in denying Plaintiffs joinder where it performed no case-specific analysis of Rule 20's requirements and instead relied on a mistaken conclusion that the PLRA categorically bars incarcerated plaintiffs from proceeding jointly; a generalized assumption that prisoners, generally, cannot logistically proceed jointly; and an unsupported assumption that one plaintiff was acting as a lawyer for his co-plaintiffs?

STATEMENT OF THE CASE

I. Statutory Background

Joinder is governed by Federal Rule of Civil Procedure 20, which allows any "persons" to "join in one action as plaintiffs" if (1) "they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences"; and (2) "any question of law or fact common to all plaintiffs will arise in the action." Fed. R. Civ. P. 20(a)(1). Nothing in Rule 20 or its Advisory Committee Notes discusses incarcerated plaintiffs or limits their ability to seek permissive joinder.

The Prison Litigation Reform Act brought about various changes to litigation procedures for incarcerated plaintiffs, but did not address joinder. One of the PLRA's changes was the modification of filing fee requirements for prisoners bringing civil actions *in forma pauperis*. That provision, 28 U.S.C. § 1915(b), states that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee," to be paid out in installments according to a statutory formula. 28 U.S.C. §§ 1915(b)(1)-(b)(2). That section also limits the filing fee that may be collected to the amount "permitted by statute for the commencement of a civil action." § 1915(b)(3). The amount is set by a neighboring provision, § 1914, which requires "the parties instituting any civil action, . . . to pay a filing fee of $350," and bars the collection of additional fees unless "prescribed by the Judicial Conference of the United States." *Id.* §§ 1914(a)-(b). No language in the PLRA addresses multi-plaintiff actions.

II. Procedural Background

Kevin Ballance, Aaron Ellis, Vincent Spinner, and Dwayne Young jointly filed suit *pro se*; the latter three are Plaintiffs-Appellants here. JA5. They alleged that Internal Revenue Service officials violated their

Fourteenth Amendment rights by denying them COVID-19 stimulus payments to which they were entitled.[2] JA5. The original plaintiffs—Mr. Ballance and Plaintiffs-Appellants—jointly prepaid the filing fee in full and did not apply for *in forma pauperis* status. JA32. Three weeks later, Plaintiffs-Appellants and Mr. Ballance moved to amend their complaint by adding five new plaintiffs who wished to pursue the same claim. JA18.

Soon after, the district court severed the jointly filed case into four separate actions and denied the pending motion to amend. JA32. It did so for three reasons. First, even though Plaintiffs were not proceeding *in forma pauperis*, the district court determined that a provision of the PLRA governing *in forma pauperis* actions—28 U.S.C. § 1915(b)(1)—operates as a blanket ban on joinder of *pro se* incarcerated plaintiffs. JA33-34. Second, it cited general stereotypes about incarcerated plaintiffs and hypothetical problems they might face—including "danger of coercion," "cell reassignments," and "personal disagreements"—to conclude that "practical considerations" precluded prisoner-plaintiffs

[2] Other courts have found the IRS's policy of withholding stimulus checks from prisoners unlawful. *See, e.g.*, *Scholl v. Mnuchin*, 494 F. Supp. 3d 661, 689-90 (N.D. Cal. 2020) (policy "contrary to law," "in excess of statutory authority," and "arbitrary and capricious").

from proceeding jointly. JA34. And third, it relied on unsupported and irrelevant assumptions about one of the original plaintiffs, Mr. Ballance—specifically, that Mr. Ballance "prepared the filings" and was serving as a "knight errant" for other plaintiffs—to deny joinder. JA33.

The district court thus severed the original plaintiffs' actions, creating three new separate cases for Mr. Ellis, Mr. Spinner, and Mr. Young. JA35; JA61; JA86; JA99. Mr. Ballance, Mr. Ellis, Mr. Spinner, and Mr. Young, along with the five additional proposed plaintiffs, objected to the magistrate judge's denial of joinder. JA43. The district court denied those objections. JA49.

After severing Mr. Ellis, Mr. Spinner, and Mr. Young from the original action, the district court gave them twenty days to apply to proceed IFP, or each pay a separate filing fee. JA62; JA87; JA100. All three Plaintiffs declined to proceed individually, instead electing to stand on the initial joint complaint. As a result, the district court dismissed the three cases without prejudice. JA67-68; JA86-87; JA105-06. Plaintiffs timely filed a joint notice of appeal in the original case. JA50. They also timely noticed this appeal on their respective severed dockets. JA69; JA88; JA107

SUMMARY OF ARGUMENT

I. The district court did not dispute that Plaintiffs met the requirements for joinder under Rule 20, nor could it have: Plaintiffs' claims arise out of the same "series of transactions"—the IRS' denial of stimulus checks to prisoners—and whether the IRS could lawfully withhold those checks is a common "question of law." Fed. R. Civ. P. 20(a)(1).

I(A)(1). Rather than applying the requirements of Rule 20 to these specific Plaintiffs, the district court erroneously found that a provision of the PLRA, 28 U.S.C. § 1915(b)(1), prohibits incarcerated plaintiffs from proceeding jointly. But the district court committed an error of law by invoking § 1915(b)(1) in the first place. That statute only applies to plaintiffs proceeding *in forma pauperis* (IFP), and these Plaintiffs did not. No circuit has ever found that non-IFP prisoners are barred from litigating jointly; this Court should not be the first.

I(A)(2). Even if § 1915(b)(1) were somehow relevant here, it does not categorically bar joinder for incarcerated plaintiffs. Neither that provision nor any other provision in the PLRA says anything about joinder. That silence is "strong evidence that the usual practice should be

followed," because "when Congress meant to depart from the usual procedural requirements, it did so expressly." *Jones*, 549 U.S. at 212, 216. All but one of this Court's sister circuits agree. The one circuit to hold otherwise did so years before *Jones*, and did not conclude that the PLRA expressly overruled Rule 20. *See Hubbard*, 262 F.3d at 1197-98. *Hubbard* instead relied on the PLRA's legislative purpose of curbing frivolous prisoner filings and § 1915(b)(1)'s provision that "*the* prisoner"—singular—must pay a full filing fee. But legislative history cannot trump the statutory text, which says nothing about multi-plaintiff actions. In any event, it's a basic principle of statutory interpretation that "words importing the singular include and apply to several persons." 1 U.S.C. § 1; *see Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 665 (1979). And even if § 1915(b)(1) could be correctly interpreted to mean that each co-plaintiff has to pay the full amount of the filing fee, that *still* wouldn't categorically bar joinder of prisoner-plaintiffs, as the Third and Seventh Circuits have held.

I(B). The district court bolstered its mistaken view that the PLRA categorically forecloses joinder for incarcerated plaintiffs by relying on stereotypes about prisoner-plaintiffs, rather than any analysis specific to

these Plaintiffs. But even if the district court's concerns were founded, those general assumptions about incarceration cannot trump the broad scope of Rule 20's unambiguous language or substitute for the requisite application of Rule 20's requirements to this specific case. *See Hagan*, 570 F.3d at 157 & n.5; *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 543 (2019).

I(C). The district court's final rationale for denying joinder fares no better: it claimed that one of the original plaintiffs, Mr. Ballance, was "representing" his co-plaintiffs, and faulted Mr. Ballance for purportedly having "prepared" the pleadings. But there is no evidence to suggest that Mr. Ballance was somehow "representing" his co-plaintiffs rather than litigating his own interests. Even if the district court were right that Mr. Ballance "prepared" the pleadings by handwriting them for all of the Plaintiffs, nothing in the Federal Rules suggests that would be improper. The district court's insistence otherwise again violated *Jones*' decree to avoid imposing special requirements for prisoner-plaintiffs in the absence of an express congressional directive. *See Jones*, 549 U.S. at 212, 216, 220-24.

STANDARD OF REVIEW

District court orders severing parties for failing to satisfy Rule 20's requirements are reviewed for abuse of discretion. *Hinson v. Norwest Fin. S.C., Inc.*, 239 F.3d 611, 618 (4th Cir. 2001). "A district court abuses its discretion when it acts in an arbitrary manner, when it fails to consider judicially-recognized factors limiting its discretion, or when it relies on erroneous factual or legal premises." *United States v. Nicholson*, 676 F.3d 376, 383 (4th Cir. 2012). A district court also abuses its discretion where it fails to "provide a reasoned analysis that comports" with Rule 20 or examine the "specific fact pattern presented by the plaintiffs." *Hagan*, 570 F.3d at 157. Similarly, merely citing to a "general principle" without "discussion of the application of that principle to [the] case" constitutes an abuse of discretion. *Randolph v. Powercomm Constr., Inc.*, 715 F. App'x 227, 230-31 (4th Cir. 2017).

While the district court's application of Rule 20's requirements is reviewed for abuse of discretion, questions of statutory interpretation—here, the interpretation of the PLRA—are reviewed de novo. *See, e.g.*, *In re Lumber Liquidators*, 952 F.3d 471, 483 (4th Cir. 2020); *United States v. Moore*, 666 F.3d 313, 320-21 (4th Cir. 2012).

ARGUMENT

I. The District Court Erred by Adopting a Blanket Rule Barring *Pro Se* Incarcerated Plaintiffs From Joining Their Claims Under Rule 20.

Rule 20 allows any "persons" to join in one action as plaintiffs if (1) they assert a right to relief "arising out of the same transaction, occurrence, or series of transactions or occurrences," and (2) the case involves at least one "question of law or fact common to all plaintiffs." Fed. R. Civ. P. 20(a)(1). The district court here did not dispute that Plaintiffs met the requirements of Rule 20. It did not, and could not, find that Plaintiffs were not "persons." *See Cruz v. Beto*, 405 U.S. 319, 321 (1972) ("Federal courts sit . . . to enforce the constitutional rights of all 'persons,' including prisoners."). Plaintiffs' claims also unquestionably arise out of the same "series of transactions": the IRS' denial of stimulus checks to prisoners. Likewise, whether the IRS could lawfully withhold stimulus checks from prisoners is a common "question of law."[3]

[3] Indeed, at least one court has certified a class for claims arising from the IRS withholding stimulus payments to prisoners, concluding that the question raised "common questions of law and fact." *See Scholl v. Mnuchin*, 494 F. Supp. 3d 661, 691 (N.D. Cal. 2020); *Scholl v. Mnuchin*, 489 F. Supp. 3d 1008, 1042-47 (N.D. Cal. 2020).

But the district court did not analyze the requirements of Rule 20 at all, let alone find that Plaintiffs failed to satisfy them. Instead, the district court denied joinder for three erroneous reasons: (1) "[A]llowing four prisoners to join in one civil action . . . flies in the face of" the PLRA; (2) joint litigation presents insurmountable practical difficulties for prisoner-plaintiffs; and (3) proceeding jointly would allow one of the plaintiffs, Mr. Ballance, to "serve as a 'knight errant'" and "litigate the interests of other inmates." JA33-34. The first conclusion is legally erroneous and contrary to decisions from the Third, Sixth, and Seventh Circuits. *See Hagan*, 570 F.3d at 154-56; *Talley-Bey*, 168 F.3d at 887; *In re Prison Litig. Reform Act*, 105 F.3d at 1137-38; *Boriboune*, 391 F.3d at 854. The second relies on general assumptions about prisoners rather than the circumstances of *these* plaintiffs. And the third makes factual findings which completely lack evidentiary support. Any one of these errors constitutes an abuse of discretion; taken together, they leave no doubt that the district court must be reversed. *Nicholson*, 676 F.3d at 383 (abuse of discretion to rely on "erroneous factual or legal premises" or to "act[] in an arbitrary manner"); *Hunter v. Earthgrains Co. Bakery*, 281

F.3d 144, 150 (4th Cir. 2002) ("error of law by a district court is by definition an abuse of discretion").

A. The PLRA does not foreclose incarcerated plaintiffs from proceeding jointly.

Rather than analyzing whether *these* Plaintiffs and their claims met the requirements for joinder under Rule 20, the district court erroneously found that a provision of the PLRA, 28 U.S.C. § 1915(b)(1), categorically prohibits incarcerated plaintiffs from proceeding jointly. The district court thought § 1915(b)(1) foreclosed joinder because the statute says that when a prisoner files a case *in forma pauperis* (IFP), "*the* prisoner shall be required to pay the full amount of a filing fee," whereas parties proceeding jointly under Rule 20 split the cost of the filing fee. 28 U.S.C. § 1915(b)(1) (emphasis added). That was wrong for two reasons. First, § 1915(b)(1) only applies to plaintiffs proceeding IFP, and these Plaintiffs were not. Second, because § 1915(b)(1) and the rest of the PLRA are silent as to joinder, Supreme Court precedent makes clear that the usual operation of Rule 20 should apply.

1. Section 1915(b)(1) does not apply to Plaintiffs because they did not proceed *in forma pauperis*.

The district court was wrong that § 1915(b)(1) bars prisoners from litigating jointly, for the reasons explained below. But as a threshold matter, § 1915(b)(1) does not apply to this case at all because these Plaintiffs did not proceed IFP.

The statutory text couldn't be clearer: § 1915(b)(1) governs prisoners who "bring[] a civil action . . . in forma pauperis"—and *only* those prisoners. 28 U.S.C. § 1915(b)(1). Indeed, § 1915 is aptly titled "Proceedings in forma pauperis." 28 U.S.C. § 1915; *see Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (noting that the title of a statute and the heading of a section are "tools" to resolve "the meaning of a statute"). But Plaintiffs here did *not* proceed IFP, so § 1915(b)(1) has no bearing on their claims. As the district court itself recognized, Plaintiffs jointly prepaid the full filing fee for the action. JA32. None of the Plaintiffs even requested IFP status. Yet the district court invoked § 1915(b)(1) to bar Plaintiffs from proceeding jointly anyway. JA33-34 (quoting § 1915(b)(1)).

In support of its blanket ban on joinder by incarcerated plaintiffs, the district court cited the Eleventh Circuit's decision in *Hubbard*. *Id.*

Hubbard was wrongly decided. *See infra* at I(A)(2). But in any event, *Hubbard* held only that prisoners proceeding IFP—to whom § 1915(b)(1) is relevant—could not file jointly. *Hubbard*, 262 F.3d at 1198. *Hubbard* said nothing at all about non-IFP prisoners, like Plaintiffs here. No circuit has ever found that non-IFP prisoners are barred from litigating jointly; this Court should not be the first.

2. Even if § 1915(b)(1) were relevant, it doesn't bar joinder of incarcerated plaintiffs.

Even if § 1915(b)(1) were relevant here, it could not categorically foreclose the joinder of incarcerated plaintiffs unless Congress expressly intended for it to modify Rule 20's usual operation. As all but one of this Court's sister circuits have held, Congress did no such thing. *See Hagan*, 570 F.3d at 154-56; *Talley-Bey*, 168 F.3d at 887; *In re Prison Litig. Reform Act*, 105 F.3d at 1137-38; *Boriboune*, 391 F.3d at 854.

The Supreme Court has instructed courts not to read the PLRA to alter the Federal Rules of Civil Procedure where Congress did not explicitly communicate an intent to do so. *See Jones*, 549 U.S. at 212-17 ("[W]hen Congress meant to depart from the usual procedural requirements, it did so expressly."). So when the PLRA is "silent" on a

procedural issue, that constitutes "strong evidence that the usual practice should be followed." *Jones*, 549 U.S. at 212.

Neither Rule 20 nor the PLRA meets *Jones'* exacting standard for modifying the "usual practice" of joinder. The plain text of § 1915(b)(1) says nothing about overruling Rule 20. The statute states that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). There is no language in § 1915 that addresses multi-plaintiff actions or prevents plaintiffs from proceeding jointly. The rest of the PLRA is similarly silent on joinder. Under *Jones*, this strongly indicates "the usual practice should be followed"—that is, that prisoner-plaintiffs are subject to the same Rule 20 requirements as non-prisoner plaintiffs. *Jones*, 549 U.S. at 212.

The Third, Sixth, and Seventh Circuits understood this. As the Third Circuit in *Hagan* explained, "[t]he PLRA did not alter the text of Rule 20, or make any reference to the Rule." 570 F.3d at 154. In the absence of an express directive, § 1915(b)(1) could not be read to override the usual operation of Rule 20 unless the two were in "irreconcilable conflict." *Id.* at 155. But no such conflict exists; indeed, Rule 20 and the

PLRA "can be read in complete harmony." *Id.* And as the Seventh Circuit noted, Congress had a template for barring joinder if it wanted to—procedural rules forbid joinder in the habeas context, and those rules existed at the time Congress passed the PLRA. *See Boriboune*, 391 F.3d at 854. "Courts must honor the difference" between the prohibition on joinder in the habeas context and the silence as to joinder in the PLRA context. *Id.*

The district court ignored this weight of appellate authority, instead relying solely on the Eleventh Circuit's decision in *Hubbard*. *Hubbard*, like the district court here, believed that § 1915(b)(1) was irreconcilable with Rule 20 because "the plain language of the PLRA requires that each prisoner proceeding IFP pay the full filing fee," whereas plaintiffs proceeding jointly ordinarily split the cost of a filing fee. 262 F.3d at 1197-98. *Hubbard* also grounded its flawed analysis in the PLRA's goal of curtailing abusive prisoner litigation. As an initial matter, this reasoning suggests *Hubbard* improperly "depart[ed] from the usual practice under the Federal Rules on the basis of perceived policy concerns." *Jones*, 549 U.S. at 212. But *Hubbard* also gave the PLRA's legislative history short shrift: its history makes clear Congress

intended to deter frivolous litigation by treating IFP prisoners *like*—not *worse* than—ordinary, non-indigent plaintiffs for fee purposes. *See* 141 CONG. REC. S7526 (statement of Sen. John Kyl) (stating the PLRA's fees provision was designed so prisoners would "have to make *the same decision* that law-abiding Americans must make: Is the lawsuit worth the price?") (emphasis added); 141 CONG. REC. S14,413-14 (statement of Sen. Bob Dole) (explaining that the PLRA was intended to correct the perceived unfairness of indigent prisoners not being "required to pay *the fees that normally accompany* the filing of a lawsuit") (emphasis added). At no point did lawmakers discuss any intent to bar or alter the usual operation of Rule 20. In any event, statutory interpretation must focus on the text; the Supreme Court has repeatedly instructed that courts are not "free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal." *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 543 (2019).

Following the Supreme Court's mandate to focus on the text reveals why *Hubbard*'s premise—that § 1915(b)(1) always requires each prisoner to pay the full filing fee of an action—was wrong. Section 1915(b)(1) states that "if *a prisoner* brings a civil action . . . in forma pauperis, *the*

prisoner shall be required to pay the full amount of a filing fee." (emphasis added). It says nothing about multi-plaintiff actions. The Eleventh Circuit assumed that the phrase "*the* prisoner" meant that a single prisoner had to pay a full filing fee. But it's a basic principle of statutory interpretation, codified in the Dictionary Act, that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise. . . words importing the singular include and apply to several persons." 1 U.S.C. § 1; *see Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 665 (1979).

Here, far from "indicat[ing] otherwise," context makes clear that the Dictionary Act's standard principle should apply. After all, *Jones* held that the PLRA is assumed to incorporate the "usual practice" of the Federal Rules. *Jones*, 549 U.S. at 212. The usual practice is that parties jointly initiating a suit split the cost of a filing fee. *See* 28 U.S.C. § 1914 ("*the parties* instituting any civil action" must "pay a filing fee of $350") (emphasis added). Courts have easily applied this rule to prisoner-plaintiffs, dividing up fees in a variety of ways. *See, e.g.*, *Talley-Bey*, 168 F.3d at 887 ("[W]e hold that each prisoner should be proportionately liable for any fees or costs that may be assessed."); *Alcala v. Woodford*,

No. C 02-0072 TEH (PR), 2002 WL 1034080, at *1 (N.D. Cal. May 21, 2002) (imposing joint and several liability for filing fee). And the statute refers to "a" filing fee, rather than "the" filing fee, suggesting that the amount of filing fee each prisoner pays might vary depending on whether they proceed jointly or individually. *See Hagan*, 570 F.3d at 164 (Roth, J., concurring in part, dissenting in part). Co-plaintiffs litigating jointly satisfy § 1915(b)(1) because they still pay "a" filing fee—their share of the fee to initiate the case. In any event, even if § 1915(b)(1) could be properly interpreted to require that each co-plaintiff proceeding IFP had to pay the full $350 filing fee, that *still* would not categorically bar joinder of prisoner-plaintiffs—as both the Third and Seventh Circuits concluded.[4]

[4] Although *Hagan* and *Boriboune* were right that the PLRA does not bar joinder of incarcerated plaintiffs, they were wrong that § 1915(b)(1) requires that *each* co-plaintiff pay the full filing fee. *See Hagan*, 570 F.3d at 155-56; *Boriboune*, 391 F.3d at 854; *but see Talley-Bey*, 168 F.3d at 887 (holding that prisoners proceeding jointly should pay a proportionate share of a *single* filing fee). Neither circuit explained how such a conclusion could be consistent with the Dictionary Act or the standard principle that the singular includes the plural. The conclusion that co-plaintiffs must each pay a full $350 filing fee is also inconsistent with the text of a neighboring provision, § 1915(b)(3), which mandates that "*[i]n no event* shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action." 28 U.S.C. § 1915(b)(3) (emphasis added). If joined prisoners each had to pay a separate filing fee, the fees collected would far "exceed the amount of fees permitted by statute." *Id.* That conclusion also violates § 1914, which bars the

Finally, the district court purported to find potential tension with another provision of the PLRA, § 1915(g), which bars prisoner-plaintiffs from proceeding *in forma pauperis* if they have received three "strikes"—prior dismissals on grounds of frivolousness, maliciousness, or failing to state a claim. JA34 (citing 28 U.S.C. § 1915(g)). Again, that provision would only apply if Plaintiffs were proceeding *in forma pauperis*, which they were not. In any case, the district court didn't explain why there would be an increased risk of receiving a "strike" for joint proceedings. All Plaintiffs here raised identical claims that succeed or fall together. If their joint action were dismissed on one of the statute's three qualifying grounds, they would receive a strike; otherwise, they would not—exactly the same as if they were proceeding individually.

* * *

In sum, the district court's identified source of conflict between Rule 20 and the PLRA—§ 1915(b)(1)—has no bearing on this case, because it only applies to prisoner-plaintiffs proceeding *in forma pauperis*. These Plaintiffs are not. But even if § 1915(b)(1) were somehow relevant, there

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collection of additional filing fees unless "prescribed by the Judicial Conference of the United States." 28 U.S.C. § 1914.

is no actual conflict between Rule 20 and that provision; three of this Court's sister circuits agree. And § 1915(b)(1) certainly does not indicate "expressly" that Congress intended to disrupt the normal operation of Rule 20, so *Jones* makes clear that the district court erred in imposing a prisoner-specific rule that diverges from the usual practice of the Federal Rules.

B. The district court abused its discretion in denying joinder based on generalized assumptions about prisoners, rather than analysis specific to *these* Plaintiffs.

The district court's second reason for severing Plaintiffs' cases was equally flawed. Instead of analyzing whether the Plaintiffs before it met Rule 20's requirements, the district court relied on general stereotypes about incarceration, stating that "[a] high likelihood exists that circumstances, such as cell reassignments, lockdowns, or personal disagreements, will often prevent plaintiffs from preparing and signing joint pleadings as required in pro se litigation." JA34. It also suggested, without any evidentiary basis, that "[a] joint lawsuit also creates a danger of coercion, subtle or otherwise." JA34.

Those general assumptions about incarceration cannot trump the broad scope of Rule 20's "clear and unambiguous" language, which allows

all "persons"—incarcerated or not—to litigate jointly. *Bus. Guides, Inc. v. Chromatic Commc'ns Enterprises, Inc.*, 498 U.S. 533, 540 (1991) (explaining that, like any other statute, the Federal Rules of Civil Procedure are given their "plain meaning"). The district court's reasoning to the contrary amounts to an "argument[] that prisoners should not be considered 'persons' permitted to join under Rule 20." *Hagan*, 570 F.3d at 156-57. As explained, *supra* at I(A)(2), the PLRA does not alter the ordinary operation of Rule 20. "While a judge may well identify credible reasons why joint litigation of prisoner suits might not generally be a good idea, such opinions cannot be used to defeat congressional intent by disregarding the plain language of Rule 20." *Id.* at 157 n.5; *see also Boriboune*, 391 F.3d at 854 (holding that even if practical reasons might sometimes make joinder less than ideal for prisoner-plaintiffs, those considerations cannot categorically bar joinder).

Of course, district courts have discretion to deny joinder under Rule 20. But at the very least, the district court must provide "a reasoned analysis" that tracks the requirements of Rule 20 and examines the specific facts presented by *these* Plaintiffs and their claims. *Hagan*, 570 F.3d at 157; *see also Hinson*, 239 F.3d at 618 (holding that a court

determining whether to grant joinder of plaintiffs "must consider" the "specific joinder provisions of Rule 20(a)"); *Randolph*, 715 F. App'x at 230-31 (abuse of discretion to rely on generalities without applying those general principles to the particular case).

The district court thus abused its discretion when it declined to conduct any reasoned analysis specific to *these* Plaintiffs, who have repeatedly demonstrated they are capable of litigating jointly. The district court thought that "cell reassignment, lockdowns, or personal disagreements" would "prevent plaintiffs from preparing and signing joint pleadings." JA34. But the record reveals no such difficulty. To the contrary, all Plaintiffs signed every pleading and motion until they were severed.[5] When the four original Plaintiffs sought to amend their complaint by adding five plaintiffs, they had all nine proposed plaintiffs sign pleadings and motions.[6] After they were severed, Mr. Ellis, Mr. Young, and Mr. Spinner filed a notice of appeal that all three signed.[7]

The district court's concern that prisoners may "coerce" others is equally inapplicable in this particular case. JA34. It did not explain why

[5] JA10, JA11; JA15; JA17; JA19; JA28, JA29; JA30, JA31.
[6] JA19; JA28, JA29; JA43.
[7] JA50.

coercion would be categorically more likely to occur among prisoner-plaintiffs than others proceeding jointly. And there is nothing to suggest that there is any coercion among Plaintiffs here.

If anything, practical considerations weigh in favor of allowing joinder for prisoner-plaintiffs, both as a general matter and in this case. Joinder of incarcerated plaintiffs furthers the foundational goal of the PLRA—to reduce the burden on the federal judiciary created by prisoner suits. *See Woodford v. Ngo*, 548 U.S. 81, 84 (2006); *Green v. Young*, 454 F.3d 405, 406 (4th Cir. 2006); *see also* 141 CONG. REC. S7526 (statement of Sen. John Kyl) (arguing the PLRA will reduce "the large burden [prisoners] place on the Federal judicial system"). Joinder supports that objective: it "promote[s] trial convenience and expedite[s] the final determination of disputes, thereby preventing multiple lawsuits." *Aleman v. Chugach Support Servs., Inc.*, 485 F.3d 206, 218 n.5 (4th Cir. 2007). In this particular case, barring joinder means that instead of *one* case challenging the IRS' denial of stimulus checks to prisoners, the court would instead be faced with *nine* cases raising exactly the same issue. And while practical considerations cannot trump statutory text, both

factors point in the same direction here: prisoner-plaintiffs should be allowed to proceed jointly.

C. Mr. Ballance is not acting as a lawyer for his co-plaintiffs.

The district court's final reason for denying joinder was equally flawed. The district court noted that Mr. Ballance—one of the original plaintiffs, but not an appellant here—could not represent his co-plaintiffs. JA33. True enough. But Plaintiff's don't want to have Mr. Ballance *represent* them; they want to litigate their claims jointly, not have Mr. Ballance as their lawyer.

There is no basis to suggest that Mr. Ballance is representing his co-plaintiffs. The district court concluded that Mr. Ballance was serving as a "knight errant" for other prisoners, without providing a single word explaining that finding. Nor do the cases cited by the district court support such a conclusion. Those cases are about plaintiffs who lacked *standing* to pursue the claims of others. *See Hummer v. Dalton*, 657 F.2d 621, 625-26 (4th Cir. 1981) (holding that the plaintiff lacked standing to seek relief for smokey conditions affecting others); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166 (1972) (reiterating an elementary principle of standing); *Inmates v. Owens*, 561 F.2d 560, 563 (4th Cir. 1977) (same).

But standing is not at issue here—each Plaintiff seeks individual relief, in the form of stimulus money, *for themselves*. The cited cases say nothing that would buttress the district court's conclusion that Mr. Ballance is improperly representing his co-plaintiffs.

The district court also stated, without explanation, that "[i]t is clear from the submitted pleadings that Ballance has prepared the filings." JA33. Even if the district court were correct that Mr. Ballance "prepared" the pleadings by handwriting them for all the Plaintiffs, nothing in the Federal Rules suggests that would be improper; certainly, the Rules do not expressly require that each co-plaintiff handwrite an equal portion of the filings. The district court's apparent imposition of such a requirement thus violates *Jones*' decree that courts cannot create special rules for prisoner-plaintiffs in the absence of an express congressional directive. *See Jones*, 549 U.S. at 212, 216, 220-24. The Federal Rules contain only one special requirement for *pro se* plaintiffs—that they must *sign* each filing—but Plaintiffs have faithfully complied with that obligation. *See* Fed. R. Civ. P. 11(a); JA10, 11, 15, 17, 19, 28, 29, 31, 43, 50. Nor does the district court's special rule find support in the caselaw. Indeed, in *Boriboune*, the district court noted that one particular co-plaintiff was

the "apparent spokesperson" for the other plaintiffs because he prepared the filings; this observation did not trouble the Seventh Circuit. *See Boriboune*, 2004 WL 502033, at *1. Just like any other group of plaintiffs who meet Rule 20's requirements, Plaintiffs are entitled to avail themselves of joinder, whether or not they jointly handwrite the pleadings.

* * *

Shorn of those erroneous legal and factual conclusions, all that remains is the district court's naked statement that it had discretion to sever "as circumstances warrant." JA34. But that discretion is not unbounded. For one, "an abuse-of-discretion standard does not mean a mistake of law is beyond appellate correction," because a "district court by definition abuses its discretion when it makes an error of law." *Koon v. United States*, 518 U.S. 81, 100 (1996). The district court's erroneous invocation and interpretation of § 1915(b)(1) thus cannot stand under the guise of "discretion"—especially because matters of statutory interpretation are reviewed de novo in any event. *See In re Lumber Liquidators*, 952 F.3d at 483. Likewise, the district court's complete failure to apply Rule 20's requirements to these particular Plaintiffs

cannot be described as an appropriate use of its discretion. *See Hagan*, 570 F.3d at 157; *Randolph*, 715 F. App'x at 230-31. So too with the district court's imposition of arbitrary requirements and reliance on unsupported, irrelevant factual findings. *See Nicholson*, 676 F.3d at 383; *Hagan*, 570 F.3d at 157. However wide a district court's latitude may stretch, it does not extend to these errors.

CONCLUSION

For these reasons, this Court should reverse the judgment of the district court and remand the case to allow Mr. Ellis, Mr. Spinner, and Mr. Young to litigate their claims jointly.

Date: August 15, 2022

Respectfully submitted,

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STATEMENT CONCERNING ORAL ARGUMENT

This case involves a question of first impression in this Court, one that has divided this Court's sister circuits. In addition to being the subject of a circuit split, the issue involves complex matters of statutory interpretation and civil procedure. Plaintiffs thus respectfully request that this Court schedule oral argument to assist the Court and to provide full and fair consideration of these issues.

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7(B) because this brief contains 6,240 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

Dated: August 15, 2022

/s/ Elizabeth A. Bixby
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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2022, I electronically filed the foregoing *Opening Brief of Plaintiff-Appellant* with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 15, 2022

/s/ Elizabeth A. Bixby
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