

# United States Court of Appeals for the Fifth Circuit

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No. 23-30026  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

July 7, 2023

Lyle W. Cayce  
Clerk

ASHRAF KHALIL,

*Plaintiff—Appellant,*

*versus*

DEPARTMENT OF CORRECTIONS; DUSTIN BICKHAM; PATRICIA  
WILLIAMS,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 3:21-CV-466

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Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges*.

PER CURIAM:\*

Ashraf Khalil, former Louisiana prisoner # 729221, appeals the district court's sua sponte dismissal of his 42 U.S.C. § 1983 civil rights complaint for failure to exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a). Khalil contends that the district court erred by sua sponte dismissing his complaint because it relied on information elicited by the form

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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§ 1983 complaint in determining that he failed to exhaust his claims. He also argues that the district court erred by failing to consider his allegation that he could not exhaust administrative remedies regarding the instant claims due to the inadequacies in the prison administrative review process.

This court reviews a district court's dismissal for failure to exhaust administrative remedies de novo. *Coleman v. Sweetin*, 745 F.3d 756, 763 (5th Cir. 2014). Although it appears that Khalil is no longer in custody, his appeal is not moot to the extent his suit seeks monetary damages. *See Cruz v. Estelle*, 497 F.2d 496, 499 (5th Cir. 1974).

As the district court concluded, Khalil was required under § 1997e(a) of the Prison Litigation Reform Act (PLRA) to exhaust administrative remedies before filing suit. *See* 42 U.S.C. § 1997e(a); *Jones v. Bock*, 549 U.S. 199, 202 (2007). However, in *Jones*, 549 U.S. at 216, the Supreme Court held that an inmate's failure to exhaust is an affirmative defense under the PLRA and that "inmates are not required to specially plead or demonstrate exhaustion in their complaints." Furthermore, "a district court cannot by local rule sidestep *Jones* by requiring prisoners to affirmatively plead exhaustion." *Carbe v. Lappin*, 492 F.3d 325, 328 (5th Cir. 2007). We have interpreted *Jones* and *Carbe* to prohibit using form complaints to elicit exhaustion information from prisoners. *See Coleman*, 745 F.3d at 763 n.5 (citing cases); *see also Torns v. Miss. Dep't of Corrs.*, 301 F. App'x 386, 389 (5th Cir. 2008).

While the district court acknowledged the holding in *Jones*, the district court nonetheless relied upon Khalil's responses to the form complaint's questions to determine that his claims were unexhausted. The district court therefore erred by sua sponte dismissing Khalil's complaint for failure to exhaust.

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We therefore VACATE the judgment of the district court and REMAND for further proceedings consistent with this opinion.

*United States Court of Appeals*

FIFTH CIRCUIT  
OFFICE OF THE CLERK

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CLERK

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July 07, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 23-30026 Khalil v. Department of Corrections  
USDC No. 3:21-CV-466

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

**FED. R. APP. P. 39** through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in dark ink, appearing to read "Majella A. Sutton", written over a light gray rectangular background.

By: \_\_\_\_\_  
Majella A. Sutton, Deputy Clerk

Enclosure(s)

Ms. Rosalind Eileen Dillon  
Ms. Devi Rao  
Ms. Mehwish Aslam Shaukat