No. 25-4873

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HANK RICHARD CORONEL,
Plaintiff-Appellant,

v.

HAVARD, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of California
No. 2:23-cv-03087
Hon. Dena Coggins, District Judge

PLAINTIFF-APPELLANT'S OPENING BRIEF

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant Hank Richard Coronel argues his civil rights complaint was improperly dismissed because the district court, employing a form complaint used only for prisoners, required him to plead facts relevant solely to an affirmative defense before any defendant even entered the case. In addition, Mr. Coronel argues that the district court incorrectly determined he failed to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA).

Pursuant to Federal Rule of Appellate Procedure 34(a), Mr. Coronel respectfully requests that this Court hold oral argument. This appeal involves an important question regarding the use of form complaints that improperly direct *pro se* prisoners to plead facts relevant solely to an affirmative defense—an all-too-common practice that squarely contravenes Supreme Court precedent and the Federal Rules of Civil Procedure. This appeal also involves recurring issues of law relating to the application of the PLRA's exhaustion requirement, including when dismissal of a complaint for failure to exhaust is appropriate. And whereas most prisoners subject to the PLRA proceed *pro se*, the fact that

this appeal is counseled makes it an excellent vehicle to decide these significant questions in a published, precedential opinion.

Additionally, this appeal would afford an able law fellow the opportunity to present argument under the supervision of undersigned counsel. That fellow, who recently graduated from law school and has taken the bar exam, substantially assisted with the drafting of this brief under undersigned counsel's supervision, and undersigned counsel would work closely with him in preparing the case for argument.

Finally, to the extent necessary, Mr. Coronel respectfully requests that this Court appoint an amicus curiae to argue in support of the lower court's judgment or request Defendants' participation in this case. Both this Court and the Supreme Court have done so in appeals that, like this one, involve pre-service dismissals and present issues of first impression.[1]

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[1] *See, e.g.*, *Johnson v. High Desert State Prison*, 127 F.4th 123, 127 n.3 (9th Cir. 2025) (noting request that California Office of Attorney General appear on defendants' behalf); Order at 2-3, *Byrd v. Phoenix Police Dep't*, No. 16-16152 (9th Cir. Sept. 21, 2016), ECF No. 7-1 (directing city attorney to file brief and appear for argument); Request for Response, *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721 (2020) (No. 18-8369) (calling for response in case where respondents had not appeared below).

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INTRODUCTION

The Prison Litigation Reform Act (PLRA) codified the affirmative defense of failure to exhaust. And under the PLRA, failure to exhaust is just that—an affirmative defense. The Supreme Court squarely held as much nearly two decades ago, *see Jones v. Bock*, 549 U.S. 199, 216 (2007), and reiterated the point in June of this year, *see Perttu v. Richards*, 605 U.S. 460, 469 (2025). It is by now "a settled premise" that "PLRA exhaustion is a standard affirmative defense," meaning that prisoners "are not required to specially plead or demonstrate exhaustion in their complaints." *Id.* (quoting *Jones*, 549 U.S. at 216).

In this case, the district court failed to follow this settled rule. Instead, the court improperly required Mr. Coronel to plead that he exhausted administrative remedies—and did so before any defendant even entered the case. Indeed, the court directly *compelled* Mr. Coronel to respond to questions about exhaustion he had left blank on a prisoner-specific form complaint, only to turn around and use his answers to dismiss his amended complaint under the PLRA's screening provisions for failure to exhaust. The district court's use of a form complaint to elicit information regarding exhaustion, and then dismiss Mr. Coronel's case

sua sponte based on that information, was flatly inconsistent with *Jones*, *Perttu*, and the Federal Rules of Civil Procedure and requires reversal.

Independently, the district court also erred in concluding that Mr. Coronel failed to exhaust. Because PLRA exhaustion is an affirmative defense—and a fact-intensive one at that—dismissal on this basis at the pleading stage is appropriate *only* in the exceedingly "rare event that a failure to exhaust is clear on the face of the complaint." *McIntyre v. Eugene School District 4J*, 976 F.3d 902, 909 n.6 (9th Cir. 2020) (citing *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014)). The district court gave lip service to this principle, but it dismissed Mr. Coronel's operative complaint nonetheless, even though he pleaded that he filed a grievance and never received a response within the timeframe provided by prison regulations. Accepting his allegations as true, Mr. Coronel exhausted administrative remedies by the time he filed his operative complaint, and any further administrative remedies were not available to him under binding, on-point precedent. At an absolute minimum, because any failure to exhaust available remedies was far from clear on the face of Mr. Coronel's amended complaint, dismissal was plainly inappropriate.

Because the district court improperly flipped the burden and erred again in dismissing for failure to exhaust, this Court should reverse. In doing so, the Court should take the opportunity to provide guidance to district courts about the impropriety of soliciting exhaustion-related facts from *pro se* litigants via form complaints or similar mechanisms.

STATEMENT OF JURISDICTION

Mr. Coronel filed this civil rights action in the United States District Court for the Eastern District of California. The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. The district court entered a final order dismissing Mr. Coronel's claims on June 25, 2025. ER-5. Mr. Coronel timely filed his notice of appeal on July 23, 2025. ER-3-4; Fed. R. App. P. 4(c)(1). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the district court erred by requiring Mr. Coronel to affirmatively plead facts relating to the affirmative defense of exhaustion under the PLRA.
2. Whether the district court erred by dismissing Mr. Coronel's amended complaint for failure to exhaust administrative remedies

where the face of the complaint affirmatively indicated that he had exhausted all remedies, or at minimum, that any further remedies were unavailable.

STATEMENT OF THE CASE

I. Legal Background

The PLRA requires that prisoners suing over civil rights violations exhaust administrative remedies. *See* 42 U.S.C. § 1997e(a). Proper exhaustion requires that a prisoner complete the administrative review process in accordance with rules "defined not by the PLRA, but by the prison grievance process itself." *Jones*, 549 U.S. at 218.

In addition, the PLRA's exhaustion requirement expressly "hinges on the 'availab[ility]' of administrative remedies." *Ross v. Blake*, 578 U.S. 632, 642 (2016) (quoting 42 U.S.C. § 1997e(a)). That is, while a prisoner must exhaust available remedies, they "need not exhaust unavailable ones." *Id.* Whether grievance procedures are "available" to a given prisoner in a given case turns on consideration of whether, under the particular circumstances at hand, the procedures "are 'capable of use'" by the prisoner "to obtain 'some relief for the action complained of.'" *Id.*

In *Jones*, the Supreme Court "conclude[d] that failure to exhaust is an affirmative defense under the PLRA," and that prisoners "are not required to specially plead or demonstrate exhaustion in their complaints." 549 U.S. at 216. Accordingly, the Court rejected a circuit rule that "place[d] the burden of pleading exhaustion in a case covered by the PLRA on the prisoner." *Id.* at 211. "Given that the PLRA does not itself require plaintiffs to plead exhaustion, such a result 'must be obtained by the process of amending the Federal Rules, and not by judicial interpretation.'" *Id.* at 217 (quoting *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993)).

II. Factual Background

A. The E.D. Cal. *Pro Se* Prisoner Form Complaint

The Eastern District of California "encourage[s]" *pro se* prisoners to use a special, "court-approved" form complaint when filing civil rights suits. Prisoner Civil Rights Packet, United States District Court for the Eastern District of California at 1 (hereinafter "Prisoner Civil Rights Packet").[2] This prisoner-specific form elicits information on each claim.

[2] https://www.caed.uscourts.gov/caednew/assets/File/Prisoner%20Civil%20Rights%20Packet_080116.pdf.

In addition, and relevant here, it affirmatively solicits information regarding exhaustion of administrative remedies. *E.g.*, ER-26.

The Prisoner Civil Rights Packet instructs *pro se* prisoners: "You must exhaust any available administrative remedies before you file a civil rights complaint. *See* 42 U.S.C. § 1997e. Consequently, *you should disclose* whether you have exhausted the inmate grievance procedures or administrative appeals for each claim in your complaint." Prisoner Civil Rights Packet at 4 (emphasis added). To that end, the prisoner-specific form complaint asks a *pro se* prisoner three yes/no questions regarding "Administrative Remedies" for each claim. *E.g.*, ER-26. The three yes/no questions, with boxes to check "yes" or "no" after each, are:

- "a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?
- b. Did you submit a request for administrative relief on [this claim]?
- c. Did you appeal your request for relief on [this claim] to the highest level?"

E.g., *id.* The form complaint also provides two short lines on which prisoners are directed to respond to a fourth question: "If you did not

submit or appeal a request for administrative relief at any level, briefly explain why you did not." *E.g.*, *id.*

The Prisoner Civil Rights Packet also warns *pro se* prisoners of the potential consequences of failing to fully complete this form complaint. The Packet's "Final Note" provides: "You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form." Prisoner Civil Rights Packet at 4.

B. Procedural History

On November 6, 2024, Plaintiff Hank Richard Coronel, who is serving a sentence of incarceration in a California state prison, filed a *pro se* civil rights complaint. ER-24. Mr. Coronel brought an Eighth Amendment claim and a Fourteenth Amendment claim, both stemming from the same incident with Defendant Havard, a California prison sergeant. ER-26-27.

Mr. Coronel alleged that on October 10, 2024, Havard called him into his office for a confidential interview regarding alleged fights. ER-26. After Mr. Coronel could not answer Havard's questions, Havard became angry and threw him to the floor. *Id.* Havard later falsely told

staff that *Mr. Coronel* had kicked and battered Havard—not the other way around. ER-26-27. Mr. Coronel suffered bruises on his face, head, and body, and he feared that Havard would make more false claims against him. *Id.*

Mr. Coronel filed his complaint using the Eastern District of California's prisoner-specific form complaint discussed above. *See* ER-24. In responding to the form complaint's questions regarding administrative exhaustion, Mr. Coronel checked "Yes" for both claims to indicate that some administrative remedies were available. ER-26-27. He then checked "Yes" to indicate that he submitted a request for administrative relief on his Eighth Amendment claim, but left that question blank on his Fourteenth Amendment claim. *Id.* He left the third and fourth questions blank, for both claims, regarding whether he had administratively appealed his claims to the highest level (and if not, why he had not). *Id.*

On March 5, 2025, a magistrate judge screened Mr. Coronel's complaint and dismissed it pre-service with leave to amend. *See* ER-19-23. The magistrate judge determined that "[f]or the purposes of

screening, plaintiff has alleged facts sufficient to state a cognizable Eighth Amendment claim against defendant." ER-21.

However, the magistrate judge concluded that both claims "appear[ed] to have a fatal flaw—the claims are unexhausted." *Id.* Specifically, the magistrate judge noted that Mr. Coronel "left blank" questions on the form complaint that related to exhaustion. ER-21-22. "Before recommending dismissal," the magistrate judge gave Mr. Coronel leave to amend his complaint to "*confirm whether* he has exhausted his administrative remedies," and "[i]f he has not, he should allege why, if at all, this action should proceed." ER-22 (emphasis added). The magistrate judge admonished, however, that if Mr. Coronel did not file such an amended complaint, the judge would "recommend that this action be dismissed." *Id.*

Heeding the magistrate judge's order, Mr. Coronel filed his First Amended Complaint on March 24, 2025, again using the prisoner form complaint. *See* ER-12. Mr. Coronel again raised the same Eighth Amendment and Fourteenth Amendment claims. ER-14-15. He included more detailed allegations about the injuries Havard inflicted: Havard threw Mr. Coronel against a wall, shoved Mr. Coronel to the ground,

kneed Mr. Coronel in the face, and placed his weight on Mr. Coronel's neck, making it difficult for Mr. Coronel to breathe. *See id.*

In addition, just as the magistrate judge directed, Mr. Coronel fully answered the form complaint's questions regarding administrative exhaustion on both claims. *Id.* Mr. Coronel checked "Yes," there were administrative remedies available. *Id.* He then checked "Yes," he submitted a request for administrative relief. *Id.* And he checked "No," he did not appeal his request for relief to the highest level. *Id.* Mr. Coronel then explained that he did not appeal because he "ha[d] not got[ten] [his] 602 back to do so"—*i.e.*, he "[n]ever got [his 602] back once submitted for level 1." *Id.*

On April 24, 2025, the magistrate judge recommended dismissing Mr. Coronel's amended complaint for failure to exhaust. *See* ER-8-11. Specifically, the magistrate judge reasoned that Mr. Coronel had not appealed his grievance to the highest level, citing his answers to the exhaustion questions on the form complaint, which the magistrate judge had directed Mr. Coronel to answer on pain of dismissal. ER-10. The judge construed Mr. Coronel's allegation that he "never got [his grievance] back once submitted," ER-15, as alleging that Mr. Coronel

could not administratively appeal "yet," ER-10. As such, the magistrate judge opined that it was "evident from the face of the complaint that plaintiff did not exhaust his available administrative remedies, and his complaint must be dismissed as a result." ER-9. The magistrate judge did not address whether further remedies were available to Mr. Coronel.

On June 25, 2025, the district court adopted the magistrate judge's findings in full. ER-6-7. The district court summarized Mr. Coronel's allegation that he "never got [his grievance] back once submitted," ER-15, as saying that "his requests are still pending," ER-6. Accordingly, the district court dismissed Mr. Coronel's amended complaint without prejudice for failure to exhaust. ER-7; *see* ER-5. On July 23, 2025, Mr. Coronel timely filed a Notice of Appeal. ER-3-4.[3]

SUMMARY OF THE ARGUMENT

I.A. The district court wrongly required Mr. Coronel to plead exhaustion of PLRA administrative remedies, despite the fact that failure to exhaust is an affirmative defense. *See Jones*, 549 U.S. at 211. Specifically, the district court improperly rejected Mr. Coronel's initial

[3] Because the district court adopted the magistrate judge's findings in full, Mr. Coronel will use "district court" going forward when referring to the orders below.

complaint—and directed him to file an amended complaint with additional allegations—solely because he did not fully answer questions on the district's prisoner form complaint pertaining to exhaustion. In doing so, the court contravened controlling Supreme Court precedent and imposed precisely the kind of special-pleading requirement that the Federal Rules of Civil Procedure prohibit, all before any defendant had even appeared (let alone raised this affirmative defense). Because neither the Federal Rules nor the PLRA require plaintiffs to plead the non-applicability of affirmative defenses—as the Supreme Court held in *Jones* and *Perttu*—the district court erred, and this Court should reverse.

B. Allowing district courts to dismiss *pro se* prisoner complaints based on information solicited by courts, either via form complaints (as here) or other pre-screening mechanisms, is inequitable and raises serious constitutional concerns. Most district courts in this Circuit regularly solicit information from prisoners about exhaustion in standard form complaints—after which they may dismiss complaints *sua sponte* for failure to exhaust. That kind of "gotcha" practice doesn't just contravene *Jones*, *Perttu*, and the Federal Rules; it foments confusion and threatens prisoner-plaintiffs' fundamental right of access to the courts.

And because such dismissals may constitute "strikes" under the PLRA, their detrimental impacts often extend further still to bar unrelated, future lawsuits. This Court should clarify that lower courts cannot *sua sponte* dismiss *pro se* litigants' complaints for failure to exhaust based on information solicited via form complaints or similar mechanisms.

II. Even considering the exhaustion-related information the district court improperly elicited from Mr. Coronel, dismissal for failure to exhaust was improper. Because failure to exhaust is a complex and fact-intensive affirmative defense, it will almost never be "clear on the face of the complaint." *McIntyre*, 976 F.3d at 909 n.6. However, in Mr. Coronel's case, the "face of the complaint" actually made "clear" the opposite, *id.*—that the PLRA's exhaustion requirement was not a bar to his suit—for two independent reasons.

A. First, by the time Mr. Coronel filed the operative amended complaint, he *had* exhausted administrative remedies. According to the California regulations that define proper exhaustion, prison officials have 60 days to respond to an informal grievance. *See* 15 Cal. Code Reg. § 3483(g). Yet prison officials never responded to Mr. Coronel by the time he filed his amended complaint—by which time at least 138 days, if not

more, had elapsed since he filed his grievance. Because officials' failure to timely respond was, in effect, a "time expired" disposition from which an appeal was not required (or even permitted) under state regulations, Mr. Coronel fully exhausted administrative remedies.

B. In the alternative, any further administrative remedies were unavailable to Mr. Coronel for two reasons. *First*, as binding precedent makes clear, Mr. Coronel was thwarted from pursuing administrative remedies when prison officials failed to respond to his initial grievance, blocking his ability to appeal. *See, e.g.*, *Fordley v. Lizarraga*, 18 F.4th 344, 352 (9th Cir. 2021); *Andres v. Marshall*, 867 F.3d 1076, 1079 (9th Cir. 2017) (per curiam). *Second*, and relatedly, the prison grievance procedures were so opaque that they failed to tell Mr. Coronel what to do when he never received a response to his initial grievance. At a minimum, it was far from "clear on the face of" Mr. Coronel's amended complaint that any administrative remedies were available to him and left unexhausted. *McIntyre*, 976 F.3d at 909 n.6.

For each of these reasons, the district court erred as a matter of law in dismissing Mr. Coronel's pleadings for failure to exhaust.

STANDARD OF REVIEW

This Court reviews "the district court's legal conclusions in its dismissal of a case for failure to exhaust administrative remedies *de novo*." *Talamantes v. Leyva*, 575 F.3d 1021, 1023 (9th Cir. 2009) (citing *Griffin v. Arpaio*, 557 F.3d 1117, 1119 (9th Cir. 2009)). Similarly, "[i]nterpretation of the PLRA is a question of law" reviewed *de novo*. *Id.* (citing *Page v. Torrey*, 201 F.3d 1136, 1138-39 (9th Cir. 2000)).

Although Mr. Coronel (a prisoner who proceeded *pro se* before the district court) did not object to the report and recommendation, that did not waive his right to appeal conclusions of law. *Bastidas v. Chappell*, 791 F.3d 1155, 1159 (9th Cir. 2015) (explaining that "[i]t is well settled law in this circuit that failure to file objections . . . does not [automatically] waive the right to appeal the district court's conclusions of law" (citing *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012)) (alterations in original)). Accordingly, this Court routinely reviews issues of law where *pro se* litigants, including prisoners, did not file objections at the R&R stage in the district court. *See, e.g.*, *United States v. Herran*, No. 20-10157, 2021 WL 5027488, at *1 (9th Cir. Oct. 29, 2021); *DeVaughn v. County of Los Angeles*, 824 F. App'x 501, 503 (9th Cir. 2020).

ARGUMENT

I. The district court erred in requiring Mr. Coronel to plead facts relating to an affirmative defense before any defendant even entered the case.

Non-exhaustion is an affirmative defense under the PLRA that defendants—not plaintiffs—are required to plead and prove; a prisoner-plaintiff has no obligation to provide *any* information about exhaustion in his complaint. *Jones*, 549 U.S. at 216. Yet the district court, employing a district-wide form complaint, improperly required Mr. Coronel to plead facts relating to exhaustion—only to turn around and dismiss his case based on those exact facts. That practice squarely contravenes Supreme Court precedent and the Federal Rules, especially where (as here) a court dismisses a case *sua sponte* based on an affirmative defense no defendant has raised. More broadly, the use of form complaints to elicit information about exhaustion from *pro se* litigants raises troubling constitutional and equitable concerns that this Court should address in a published opinion.

A. The district court wrongly required Mr. Coronel to plead exhaustion, contravening unambiguous Supreme Court precedent.

Despite the "settled premise" that "PLRA exhaustion is a standard affirmative defense," *Perttu*, 605 U.S. at 469, the district court required Mr. Coronel to affirmatively plead it. *See* ER-10, ER-22. In doing so, the

district court flouted unambiguous Supreme Court precedent. Moreover, the court improperly imposed this special pleading requirement *sua sponte*, before any defendant had even been served (let alone raised the affirmative defense of failure to exhaust). As several courts have held, this practice contravenes the Federal Rules and requires reversal.

1. Nearly two decades ago, the Supreme Court squarely rejected a rule that "place[d] the burden of pleading exhaustion . . . on the prisoner." *Jones*, 549 U.S. at 211. As the Court explained, Federal Rule of Civil Procedure 8 requires a plaintiff only to plead a "short and plain statement of the claim" in a complaint, whereas affirmative defenses must be pleaded by *defendants* in response. *Jones*, 549 U.S. at 212 (quoting Rule 8). Because "the usual practice under the Federal Rules is to regard exhaustion as an affirmative defense," and nothing in the PLRA purports to alter that practice, the *Jones* Court unambiguously "conclude[d]" that prisoners "are not required to specially plead or demonstrate exhaustion in their complaints." *Id.* at 212, 216.

In discussing what is now a "settled premise," *Perttu*, 605 U.S. at 469, the *Jones* Court was "not insensitive to the challenges faced by the lower federal courts in managing their dockets," *Jones*, 549 U.S. at 224.

Still, the Court explained, federal courts are not free to "depart from the usual practice under the Federal Rules on the basis on perceived policy concerns." *Id.* at 212. Rather, any augmentation of pleading requirements "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Id.* at 213.

Despite this on-point Supreme Court precedent, the district court imposed a special pleading requirement by forcing Mr. Coronel to plead exhaustion in his complaint. The court correctly held that Mr. Coronel "alleged facts sufficient to state a cognizable Eighth Amendment claim against defendant." ER-21. Nevertheless, the court dismissed Mr. Coronel's initial complaint merely because it "appear[ed]" the claims *could be* unexhausted, based on unanswered questions on the district's form complaint pertaining solely to this affirmative defense (which no defendant had raised—to this day, no defendant has been served). *Id.* The court then placed the onus on Mr. Coronel to "*confirm* whether he has exhausted his administrative remedies." ER-22 (emphasis added). And to top it off, the court relied on the facts it improperly solicited from Mr. Coronel regarding this affirmative defense to dismiss the amended complaint at the screening stage. ER-10. Thus, Mr. Coronel was forced to

meet a "more onerous pleading rule[]," contrary to Supreme Court precedent and the Federal Rules. *Jones*, 549 U.S. at 224.

It makes no difference that the district court sought to effectively amend the Federal Rules through a court form rather than through circuit precedent. Just as circuit precedent must be consistent with the Federal Rules, so must local rules, practices, and forms. *See* Fed. R. Civ. P. 83(a)(1) (providing that "local rule[s] must be consistent with . . . federal statutes and rules"). Accordingly, this Court has held local rules invalid when they conflict with the Federal Rules. *See, e.g.*, *ABS Entertainment, Inc. v. CBS Corp.*, 908 F.3d 405, 426-27 (9th Cir. 2018); *Heinemann v. Satterberg*, 731 F.3d 914, 916-17 (9th Cir. 2013). In turn, local court forms carry even *less* legal weight than local rules, which are at least subject to notice and comment.[4] So, functionally amending the Federal Rules through local court forms is at least as erroneous as doing so via the circuit rule in *Jones*—if not more so.

[4] *See, e.g.*, *Proposed New and Amended Local Rules for Notice and Comment*, United States District Court for the Eastern District of California, https://www.caed.uscourts.gov/caednew/index.cfm/rules/local-rules/.

2. Because the district court's dismissal of Mr. Coronel's amended complaint would constitute reversible error even if *a defendant* had ultimately asserted the non-exhaustion affirmative defense, this Court need go no further. But the district court's decision to dismiss for failure to exhaust *sua sponte*, before any defendant had even appeared, renders the error more troubling still, given the text of the Federal Rules and the principle of party presentation.

The PLRA authorizes *sua sponte* dismissals for "fail[ure] to state a claim." *E.g.*, 28 U.S.C. § 1915A(b). And this Court has interpreted dicta in *Jones* to authorize dismissal under Rule 12(b)(6) (where a defendant moves for it) only "[i]n the rare event that a failure to exhaust is clear on the face of the complaint." *Albino*, 747 F.3d at 1166, 1169 (citing *Jones*, 549 U.S. at 215-16).[5] But both *Jones* and *Albino* involved dismissals on

[5] *Jones*'s dicta is arguably inconsistent with the general rule of civil procedure that "a dismissal for failure to state a claim is an adjudication on the merits," *Bailey v. Zimmer*, 993 F.2d 881, 881 (9th Cir. 1993), whereas "dismissal of an action on the ground of failure to exhaust administrative remedies is not on the merits," *Heath v. Cleary*, 708 F.2d 1376, 1380 n.4 (9th Cir. 1983); *cf. Snider v. Melindez*, 199 F.3d 108, 112 (2d Cir. 1999) ("We do not think that Section 1915(g) was meant to impose a strike upon a prisoner who suffers a dismissal because of the prematurity of his suit but then exhausts his administrative remedies and successfully reinstitutes it."). Regardless, it was not "clear on the face of the complaint" that Mr. Coronel didn't exhaust. *See infra* Part II.

motions by defendants, not *sua sponte* dismissals based on an affirmative defense no defendant had even raised. There is good reason to treat these two contexts differently: Because the Federal Rules provide that "a party must affirmatively state any . . . affirmative defense," Fed. R. Civ. P. 8(c)(1), they "require[] *defendants* to plead affirmative defenses in answer to plaintiff's complaint"—and "[d]efenses not so raised are waived," *Taylor v. United States*, 821 F.2d 1428, 1432 (9th Cir. 1987) (emphasis added). Thus, "[i]n the rare event that a failure to exhaust is clear on the face of the complaint, a *defendant may move* for dismissal"; otherwise, "*defendants must produce* evidence proving failure to exhaust in order to carry *their burden*." *Albino*, 747 F.3d at 1166 (emphases added).

What's more, the district court went much further than simply applying the PLRA's screening provisions to Mr. Coronel's allegations; it relied on information it affirmatively solicited from him, *sua sponte*, via (1) a court form and (2) an order threatening dismissal. That maneuver threatened the principle of party presentation. "[I]n both civil and criminal cases, in the first instance and on appeal . . . , [courts] rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *United States v.*

Sineneng-Smith, 590 U.S. 371, 375 (2020) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)) (first alteration in original). "In short: '[C]ourts are essentially passive instruments of government.'" *Id.* at 376 (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (Arnold, J., concurring in denial of rehearing en banc)).

Here, the district court was anything but "passive." *Id.* It actively demanded information regarding an affirmative defense before any defendant appeared, then asserted that affirmative defense *sua sponte* on the defendants' behalf. This departure from the norm was particularly perverse in light of Mr. Coronel's *pro se* status. *Cf. id.* at 375 (emphasizing that "[i]n criminal cases, departures from the party presentation principle have usually occurred 'to *protect* a *pro se* litigant's rights'" (quoting *Greenlaw*, 554 U.S. at 244) (emphasis added)). While there may be some "circumstances in which a modest initiating role for a court is appropriate," *id.* at 376, the district court's dismissal of Mr. Coronel's *pro se* pleading on the grounds of an affirmative defense no one raised—reliant on facts the court compelled him to plead under pain of dismissal—was not one of them.

3. Multiple other circuits have held that district courts cannot require prisoners to plead exhaustion through the use of prisoner-specific form complaints or other mechanisms that affirmatively elicit exhaustion information from plaintiffs.

For instance, in *Coleman v. Sweetin*, 745 F.3d 756, 763 (5th Cir. 2014), the Fifth Circuit reversed the dismissal of a prisoner's claims for failure to exhaust because the magistrate judge had erroneously relied on facts discovered outside of the pleadings. As the Fifth Circuit explained, "[d]istrict courts may not circumvent" the rule that exhaustion is an affirmative defense "by considering testimony [from outside the pleadings] or requiring prisoners to affirmatively plead exhaustion through local rules." *Id.* Relevant here, the court stressed that "*Jones* . . . prohibit[s] the use of form complaints to elicit information regarding a prisoner's exhaustion of administrative remedies." *Id.* at 763 n.5. Likewise, in *Khalil v. Department of Corrections*, No. 23-30026, 2023 WL 4401116, at *1 (5th Cir. July 7, 2023), the Fifth Circuit reversed a dismissal where the district court erroneously "relied upon [a prisoner's] responses to the form complaint's questions to determine that his claims

were unexhausted," reiterating that courts cannot "us[e] form complaints to elicit exhaustion information from prisoners."

Similarly, the Second Circuit has held that a prisoner's responses about exhaustion on a "standard-form pro se complaint" are "not an adequate basis" for dismissal. *Snider*, 199 F.3d at 113. Whether an administrative remedy is available, the court reasoned, "is purely a question of law," and "[t]he court cannot properly determine a question of law on the basis of a party's concession (must less by the concession of an unrepresented party)." *Id.* at 114. The Fourth Circuit has also held that it is error to order a *pro se* prisoner to disclose information about exhaustion and then dismiss his complaint for failure to exhaust. *Custis v. Davis*, 851 F.3d 358, 362 (4th Cir. 2017). The court explained that "permitting courts to sua sponte screen complaints and demand further documentation of exhaustion . . . would frustrate the principles laid out in *Jones* and turn the affirmative defense into a pleading requirement." *Id.* at 363. And the Tenth Circuit, too, vacated a dismissal for failure to exhaust where the *pro se* prisoner-plaintiff had left blank a yes/no question on his form complaint, emphasizing that "failure to answer the question on the form complaint about exhaustion does not make it clear

that [the plaintiff] did not exhaust his claim." *Lax v. Corizon Medical Staff*, 766 F. App'x 626, 628 (10th Cir. 2019); *accord id.* ("Per the Supreme Court, [the prisoner's] complaint need not address exhaustion." (citing *Jones*, 549 U.S. at 216)).

Finally, in a concurring opinion in *Wells v. Brown*, 58 F.4th 1347 (11th Cir. 2023) (en banc), Judge Rosenbaum, joined by Chief Judge William Pryor and Judge Jill Pryor, further outlined the impropriety of using form complaints to elicit information from prisoner-plaintiffs about exhaustion. As these jurists noted, and as *Jones* makes clear, requiring plaintiffs to plead facts related to exhaustion departs from the "general rule" that the "plaintiff is 'the master of the complaint'" and the settled premise that "failure to exhaust is an affirmative defense." *Wells*, 58 F.4th at 1363-64 (Rosenbaum, J., concurring) (quoting *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002)).

In sum, the district court erred in requiring Mr. Coronel to plead facts pertaining to the affirmative defense of exhaustion and then dismissing his complaint *sua sponte* based on those facts. "Given that the PLRA does not itself require plaintiffs to plead exhaustion, such a result 'must be obtained by the process of amending the Federal Rules, and not

by'" local court forms or orders. *Jones*, 549 U.S. at 217 (quoting *Leatherman*, 507 U.S. at 168).

B. Dismissing *pro se* civil rights complaints based on exhaustion-related information solicited by courts raises serious constitutional concerns.

More broadly, district-court mechanisms that shift the burden of pleading exhaustion to prisoner-plaintiffs raise serious equitable and constitutional concerns. This Court should take this opportunity to clarify that district courts may not use form complaints or similar mechanisms to affirmatively solicit exhaustion information from *pro se* prisoners at the pleading stage and then dismiss *sua sponte* on that basis.

1. As a preliminary matter, despite *Jones*'s clarity, this problem is widespread in this Circuit. Consider just a few examples. The Central District of California asks every *pro se* prisoner-pleader confusing yes/no questions like "Is there a grievance procedure available at the institution where the events relating to your current complaint occurred?" and "Is the grievance procedure completed?", alongside a directive to "attach copies of papers related to the grievance procedure."[6] The Northern

[6] Civil Rights Complaint, United States District Court for the Central District of California at 2, https://apps.cacd.uscourts.gov/cm-api/

District of California asks every *pro se* prisoner-pleader yes/no questions like "[D]id you present the facts in your complaint for review through the grievance procedure?" and "Is the last level to which you appealed the highest level of appeal available to you?", and directs each plaintiff to provide "the [administrative] appeal number and the date and result of the appeal at each level of review."[7] And the Southern District of California perplexingly asks *pro se* litigants: "Have you previously sought and exhausted all forms of available relief from the proper administrative officials regarding the acts alleged . . . above?"[8]

In fact (save for the District of Montana, the District of Nevada, and the Western District of Washington),[9] nearly every district in this Circuit

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dwwwroot/Prisoner%20Civil%20Rights%20Complaint-Non-Pilot%20Project%20Packet.pdf.

[7] Complaint by a Prisoner under the Civil Rights Act, 42 U.S.C. § 1983, United States District Court for the Northern District of California at 1, https://cand.uscourts.gov/wp-content/uploads/pro-se/forms-for-prisoners/Complaint-by-a-Prisoner-form_12.4.23.pdf.

[8] Complaint under the Civil Rights Act 42 U.S.C. § 1983, United States District Court for the Southern District of California at 6, https://www.casd.uscourts.gov/_assets/pdf/forms/Complaint_Civil%20Rights%20Act%2042USC1983.pdf.

[9] *See* Complaint for Violation of Civil Rights, United States District Court of Montana, https://www.mtd.uscourts.gov/sites/mtd/files/Prisoner%20complaint_for_violation_of_civil_rights.pdf; Civil Rights Complaint by an Inmate, United States District Court of Nevada,

appears to encourage *pro se* prisoner-plaintiffs to plead at least some information regarding the exhaustion affirmative defense.[10] Worse, as happened here, courts have used the information these forms solicit from unwitting litigants to dismiss those litigants' civil rights complaints *sua sponte*, based on what is supposed to be an affirmative defense, before

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https://www.nvd.uscourts.gov/wp-content/uploads/2024/01/Inmate-1983-Complaint-and-Instructions-Effective-12-1-23.pdf; Prisoner Civil Rights Complaint, United States District Court for the Western District of Washington, https://www.wawd.uscourts.gov/sites/wawd/files/1983CivilRightsComplaintRev11-30-2020.pdf.

[10] *See* Complaint for Violation of Civil Rights, United States District Court of Alaska at 6-8, https://www.akd.uscourts.gov/sites/akd/files/forms/Pro_Se_14.pdf; Civil Rights Complaint by a Prisoner, United States District Court of Arizona at 3, https://www.azd.uscourts.gov/sites/azd/files/forms/Civil%20Rights%20Complaint%20instructions-form.pdf; Complaint for Violation of Civil Rights, United States District Court of Hawaii at 6-9, https://www.hid.uscourts.gov/forms/HID/ProSe/complaint_for_violation_of_civil_rights_prisoner_0.pdf; Prisoner Complaint, United States District Court of Idaho at 2, https://www.id.uscourts.gov/Content_Fetcher/index.cfml/Prisoner_Complaint_Form_860.pdf?Content_ID=860; Complaint for Violation of Civil Rights, United States District Court of Oregon at 6-8, https://www.uscourts.gov/sites/default/files/complaint_for_violation_of_civil_rights_prisoner.pdf; Complaint, United States District Court for the Eastern District of Washington at 8, https://www.waed.uscourts.gov/sites/default/files/forms/Prisoner%20Civil%20Rights%20Complaint.pdf; Complaint for Violation of Civil Rights, United States District Court of Guam at 6-8, https://www.uscourts.gov/sites/default/files/complaint_for_violation_of_civil_rights_prisoner.pdf; Complaint for Violation of Civil Rights, United States District Court of the Northern Mariana Islands at 6-8, https://www.uscourts.gov/file/20156/download.

any defendant has been served. That is so despite the fact that—even when a defendant moves to dismiss for failure to exhaust—it is a "rare event" when this complex, fact-dependent defense is "clear on the face of the complaint." *McIntyre*, 976 F.3d at 909 n.6.

2. Moreover, as Judge Rosenbaum and her colleagues explained in *Wells*, form complaints that elicit information about exhaustion from *pro se* plaintiffs inevitably sow confusion and invite mistakes. *See Wells*, 58 F.4th at 1364 (Rosenbaum, J., concurring). In particular, "asking pro se prisoners whether they have exhausted *available* remedies"—as the Eastern District of California's form complaint does—"demands too much." *Id.* at 1364 (emphasis in original). "A simple 'check yes or no' box does not allow a pro se prisoner to explain" if a remedy was available. *Id.* And "even if"—as here—"the district-court form uses the word 'available,' it demands too much from pro se prisoners to expect them, based on that adjective, to understand that they are being asked whether any of the three exceptions to the exhaustion requirement that the Supreme Court has distilled [in *Ross*] applies." *Id.*; *accord Snider*, 199 F.3d at 114 n.3 (listing "numerous" other ways in which soliciting information about

exhaustion from *pro se* prisoner-plaintiffs "presents . . . possibilities for error").

Nor does it help, as Judge Rosenbaum explained, that prisoners might theoretically leave portions of a form complaint blank. "[L]itigants aren't free to ignore district court orders, and again, it asks too much of a pro se prisoner to separate a district-court form complaint (which contains instructions from the court) and a district-court order." *Wells*, 58 F.4th at 1364. Plus, as Mr. Coronel's case illustrates, courts themselves may turn an optional question into a mandatory one. Mr. Coronel *did* leave exhaustion-related portions of the form complaint blank, as was his right—but the district court wouldn't let him proceed, even after finding that he stated a claim under the Eighth Amendment. ER-21. Instead, the court compelled him to re-file an amended complaint with *more* allegations about exhaustion. ER-22.

3. For all these reasons, using forms to elicit exhaustion-related information from *pro se* prisoners, and then dismissing their complaints based on this information, is patently unfair. And for the reasons explained *supra* Part I.A, it violates *Jones* and the Federal Rules. But more than that, it infringes upon prisoners' fundamental right of access

to the courts. The importance of this right in our constitutional scheme cannot be overstated: "Because a prisoner ordinarily is divested of the privilege to vote, the right to file a court action might be said to be his remaining most 'fundamental political right, because preservative of all rights.'" *McCarthy v. Madigan*, 503 U.S. 140, 153 (1992) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). Accordingly, the Supreme Court long ago recognized that the fundamental right of incarcerated persons to access the courts "may not be denied or obstructed." *Johnson v. Avery*, 393 U.S. 483, 485 (1969); *see Lewis v. Casey*, 518 U.S. 343, 354 (1996) (recognizing right of access to pursue "actions under 42 U.S.C. § 1983 to vindicate 'basic constitutional rights'"). And "pleading standards . . . are the key that opens access to courts." *Phillips v. County of Allegheny*, 515 F.3d 224, 230 (3d Cir. 2008). By inducing *pro se* plaintiffs to plead themselves out of court, forms like the one employed here throw away the key, effectively nullifying the right.

On top of all that, a practice of prematurely dismissing prisoner complaints based on improperly solicited allegations relating to exhaustion could prove catastrophic for prisoners' *future* attempts to vindicate their rights. Again, this Court has interpreted *Jones* to

authorize dismissal for failure to state a claim "[i]n the rare event that a failure to exhaust is clear on the face on the complaint." *Albino*, 747 F.3d at 1166. And under the PLRA's *in forma pauperis* provisions, a dismissal for failure to state a claim may qualify as a "strike." *See* 28 U.S.C. § 1915(g). Thus, this Court has suggested that a dismissal for failure to exhaust based solely on the face of the complaint may constitute a strike. *See El-Shaddai v. Zamora*, 833 F.3d 1036, 1043-44 (9th Cir. 2016).[11]

Once a prisoner receives three strikes, they can no longer proceed *in forma pauperis* in any future civil rights case, unless the PLRA's imminent-danger exception applies. *See* 28 U.S.C. § 1915(g). Instead, they must pay the full filing fee up front. *See id.* In the Eastern District of California, that fee is $405[12]—a cost that few incarcerated people can afford. Thus, an improper dismissal for failure to exhaust could impede a prisoner's access to the courts for years to come in subsequent, unrelated cases, even if those subsequent cases are important, meritorious, and

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[11] Other courts have held otherwise. *See, e.g.*, *Owens v. Isaac*, 487 F.3d 561, 563 (8th Cir. 2007) (per curiam) (failure to exhaust not a strike); *Green v. Young*, 454 F.3d 405, 409 (4th Cir. 2006) (same); *Snider*, 199 F.3d at 112 (same).

[12] *Fee Schedule*, United States District Court for the Eastern District of California, https://www.caed.uscourts.gov/caednew/index.cfm/attorney-info/fee-schedule/.

impeccably exhausted. *See, e.g.*, *Wells*, 58 F.4th at 1359-60 (majority opinion) (assessing a strike for the decade-old, screening-stage dismissal of the plaintiff's prior case for failure to exhaust, regardless of whether the prior dismissal may have been erroneous).

Ultimately, requiring prisoner-plaintiffs to plead exhaustion (and then using that information to dismiss their complaints *sua sponte*) not only violates unambiguous Supreme Court precedent—it invites confusion, infringes upon the constitutional right of access to the courts, and can trigger inequitable, damaging long-term consequences. This Court should therefore make clear that courts may not rely on exhaustion-related information solicited using form complaints to dismiss *pro se* prisoners' civil rights claims.

II. The district court erred in dismissing for failure to exhaust because Mr. Coronel's compliance with the PLRA was clear from the face of his amended complaint.

On top of its improper demand that Mr. Coronel plead facts relating to exhaustion, the district court erred in dismissing for failure to exhaust because his compliance with the PLRA's exhaustion requirement was clear from the amended complaint. PLRA exhaustion is both an affirmative defense and a complex, fact-intensive inquiry, so dismissal

for non-exhaustion at the pleading stage is permissible only in the unusual case where "a failure to exhaust is clear on the face of the complaint." *McIntyre*, 976 F.3d at 909 n.6.

That was not the case here. In fact, what "the face of" Mr. Coronel's amended complaint made "clear," *id.*, was that he had satisfied the PLRA's exhaustion requirement, for two reasons. First, Mr. Coronel exhausted his administrative remedies by the time he filed his operative complaint because the time had expired for prison officials to respond to his grievance, which the applicable regulations indicate constitutes exhaustion. And second, if any possible administrative remedies could be considered unexhausted, those administrative remedies were not available to Mr. Coronel. At minimum, then, it plainly cannot be said that any failure to exhaust available remedies was "clear on the face of the complaint." *Id.*

A. Mr. Coronel pleaded that he properly exhausted applicable prison grievance procedures.

The district court erred in concluding that Mr. Coronel failed to exhaust administrative remedies. Rather, Mr. Coronel's responses to the form complaint's exhaustion questions indicated that he did, in fact, properly exhaust by the time he filed his operative complaint.

1. Under the PLRA, prisoners must exhaust available remedies "in accordance with the applicable procedural rules." *Jones*, 549 U.S. at 218. In other words, the prison itself dictates the grievance process. *Id.* Relevant here, applicable regulations require California prison officials to respond to grievances within 60 days. The regulations state that "[t]he Grievance Coordinator shall ensure that a written decision letter is issued no later than 60 calendar days after receipt of the grievance" and that a "Time Expired" decision letter will issue where "the Reviewing Authority was not able to respond to the claim within 60 calendar days." 15 Cal. Code Reg. § 3483(g).[13] Critically, the regulations also provide that a "time expired" designation "may not [be] appealed." *Id.* at § 3483(l)(3). Accordingly, when the prisoner's grievance is "time expired" because the prison was "not able to respond to" it "within 60 calendar days," *id.* at § 3484(g), the regulations expressly state that "the administrative remedies process is exhausted," *id.* at § 3483(l)(3).

2. Here, Mr. Coronel's allegations make clear that prison officials missed this deadline by a mile. Mr. Coronel filed his original

[13] The regulations further state that the "written decision letter shall be sent to the claimant no later than ten business days after its issuance by the Office of Grievances[.]" *Id.* at § 3483(i).

complaint on November 6, 2024, and he explained therein that he had filed a first-level grievance at some point before that date. *See* ER-24-29. Mr. Coronel then filed the operative complaint on March 24, 2025. *See* ER-12-18; *Saddozai v. Davis*, 35 F.4th 705, 708 (9th Cir. 2022) (holding that where a prisoner-plaintiff fully exhausts remedies before filing the operative amended complaint, dismissal for failure to exhaust is inappropriate).[14] In his amended complaint—a full 138 days after he filed his original complaint—Mr. Coronel explained that he never received a response to his initial grievance. *See* ER-14-15.

Given that the regulations require prison officials to "ensure a written decision letter is issued no later than 60 calendar days," prison officials failed to respond to Mr. Coronel's grievance within the required time period. 15 Cal. Code Reg. § 3483(g). As a result, by the time Mr. Coronel filed the operative complaint, the outcome of his grievance was tantamount to a "time expired" designation. *See id.* at § 3483(g)(10). Per

[14] The district court incorrectly stated that "[e]xhaustion must occur prior to filing suit, and a plaintiff cannot exhaust while the suit is pending." ER-10 (citing *McKinney v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002)). That may be true in some contexts, but *Saddozai* squarely holds that a prisoner can exhaust "while the suit is pending," *id.*, where, as here, the prisoner amends his complaint after properly exhausting, *see* 35 F.4th at 708-09.

the regulations, that designation was "not appeal[able]"; "therefore, the administrative process [was] exhausted." *Id.* at § 3483(l)(3).

For exhaustion purposes, it makes no difference that Mr. Coronel did not receive a formal written decision letter. As a practical matter, the consequence was the same. Once "the Reviewing Authority was not able to respond to the claim within 60 calendar days," *id.* at § 3483(g)(10), the outcome was preordained; any decision would be "time expired," which obviously was "not appeal[able]," and so "the administrative process [was] exhausted," *id.* at § 3483(l)(3). And while the district court treated Mr. Coronel's grievance as "still pending," ER-6, that was an improper reading of Mr. Coronel's allegations that he "[h]a[d] not got [his] 602 back" and "[n]ever got it back once submitted for level 1," ER-14-15. In addition to contradicting the regulations requiring a response within 60 days, such an inference violated the rule that "pleadings are construed in the light most favorable to the non-moving party," *Harper v. Nedd*, 71 F.4th 1181, 1184 (9th Cir. 2023), especially where (as here) the pleader

is *pro se*, *see, e.g.*, *Capp v. County of San Diego*, 940 F.3d 1046, 1052 (9th Cir. 2019).[15]

For these reasons, "[a] prisoner's administrative remedies are deemed exhausted when a valid grievance has been filed and the state's time for responding thereto has expired." *Powe v. Ennis*, 177 F.3d 393, 394 (5th Cir. 1999). Because Mr. Coronel's operative complaint was filed long after applicable regulations required officials to respond to his grievance, their failure to respond was tantamount to a "time expired" designation, and Mr. Coronel exhausted his remedies.

B. Alternatively, and at minimum, Mr. Coronel pleaded that administrative remedies were unavailable.

In the alternative, "[u]nder § 1997e(a), the exhaustion requirement hinges on the 'availab[ility]' of administrative remedies: An inmate . . . must exhaust available remedies, but need not exhaust unavailable ones." *Ross*, 578 U.S. at 642. As a result, even in the rare case where "failure to exhaust *is* clear from the face of the complaint," dismissal remains inappropriate where it is "not clear" whether "administrative

[15] In the alternative, if the issuance of a written decision letter was required, then prison officials' failure to respond to Mr. Coronel's grievance rendered any further remedies unavailable. *See infra* Part II.B.

remedies were in fact available." *William v. Buenostrome*, 764 F. App'x 573, 574 (9th Cir. 2019) (emphasis added). In other words, before dismissing a complaint for failure to exhaust, "courts . . . are obligated to ensure that any defects in exhaustion were not procured from the action or inaction of prison officials." *Aquilar-Avellaveda v. Terrell*, 478 F.3d 1223, 1225 (10th Cir. 2007).

The district court failed to meet that obligation—and that error alone requires reversal. Moreover, had the district court fulfilled its obligation, it would have determined that any further administrative remedies were unavailable to Mr. Coronel for two related reasons: First, prison administrators' failure to timely respond "thwart[ed]" Mr. Coronel from utilizing the grievance process, and second, the process was "so opaque" that it was "incapable of use." *Ross*, 578 U.S. at 643-44.

1. Mr. Coronel was thwarted from pursuing administrative remedies when prison officials failed to issue a response to his initial grievance within 60 days. This Court has repeatedly held that where prison officials fail to respond to a grievance, any further administrative remedies are unavailable. For instance, in *Andres v. Marshall*, 867 F.3d 1076, 1079 (9th Cir. 2017) (per curiam), this Court held: "When prison

officials improperly fail to process a prisoner's grievance, the prisoner is deemed to have exhausted available administrative remedies." And in *Fordley v. Lizarraga*, 18 F.4th 344, 352 (9th Cir. 2021), this Court reiterated that "where inmates take reasonably appropriate steps to exhaust but are precluded from doing so by a prison's erroneous failure to process the grievance, we have deemed the exhaustion requirement satisfied." As such, in both cases, the Court held that district courts erred in dismissing prisoners' claims for failure to exhaust. *See Andres*, 867 F.3d at 1079; *Fordley*, 18 F.4th at 358.

Unpublished decisions bolster this conclusion. *See Paulo v. Williams*, Nos. 24-23, 24-1083, 2025 WL 1904423, at *1 (9th Cir. July 10, 2025); *Bloor v. McDaniel*, 698 F. App'x 458, 458 (9th Cir. 2017); *cf. Mills v. Mitchell*, 792 F. App'x 511, 512 (9th Cir. 2020). And a wall of consistent authority from other circuits confirms the point: Where prison officials simply fail to respond to a grievance, they impede the prisoner from utilizing the grievance process, rendering further remedies unavailable.[16]

[16] *See Hayes v. Dahlke*, 976 F.3d 259, 270 (2d Cir. 2020) ("We therefore hold that, because the [local grievance procedure] imposes a mandatory

That is precisely what happened here: Mr. Coronel was thwarted from utilizing prison grievance procedures when prison officials failed to respond to his grievance. Even assuming *arguendo* that the officials' failure to timely respond did not itself render Mr. Coronel's administrative remedies exhausted under prison regulations, *see supra*

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deadline for the [prison] to respond, an inmate exhausts administrative remedies when he follows the procedure in its entirety but the [prison] fails to respond within the 30 days it is allocated under the regulations."); *Shifflett v. Korszniak*, 934 F.3d 356, 365 (3d Cir. 2019) ("Hence we hold that as soon as a prison fails to respond to a properly submitted grievance or appeal within the time limits prescribed by its own policies, it has made its administrative remedies unavailable and the prisoner has fully discharged the PLRA's exhaustion requirement."); *Moore v. Bennette*, 517 F.3d 717, 725 (4th Cir. 2008) ("[A] prisoner must have utilized all available remedies 'in accordance with the applicable procedural rules,' so that prison officials have been given the opportunity to address the claims administratively. Having done that, a prisoner has exhausted his available remedies, even if prison employees do not respond." (internal citations omitted)); *Boyd v. Corrs. Corp. of America*, 380 F.3d 989, 996 (6th Cir. 2004) ("[S]everal circuits have held that the exhaustion requirement is satisfied where prison officials fail to timely respond to an inmate's written grievance."); *Jernigan v. Stuchell*, 304 F.3d 1030, 1032 (10th Cir. 2002) ("[W]e agree that the failure to respond to a grievance within the time limits contained in the grievance policy renders an administrative remedy unavailable."); *Lewis v. Washington*, 300 F.3d 829, 833 (7th Cir. 2002) ("[W]e refuse to interpret the PLRA 'so narrowly as to . . . permit [prison officials] to exploit the exhaustion requirement through indefinite delay in responding to grievances.'"); *Foulk v. Charrier*, 262 F.3d 687, 698 (8th Cir. 2001) ("Once [the prison] failed to respond to his [complaint], no further administrative proceedings were 'available' to him.").

Part II.A, their failure to provide Mr. Coronel with any written decision letter within the 60-day timeframe thwarted him from pursuing further remedies, *see, e.g.*, *Andres*, 867 F.3d at 1079; *Fordley*, 18 F.4th at 358.

2. Relatedly, the regulations were so opaque that they failed to tell Mr. Coronel what to do when he failed to receive a response to his initial grievance. The regulations clearly state when a claim subject to a written decision letter *is* or *is not* exhausted. *See* 15 Cal. Code Reg. § 3483(l)(1) (listing eight circumstances in which a decision by the Office of Grievances may be appealed and is therefore not exhausted); *id.* at § 3483(l)(3) (listing two circumstances, including "time expired," in which a decision cannot be appealed and is therefore exhausted). However, the regulations shed no light on what, if anything, a prisoner must do to exhaust when he never receives a written decision letter at all. *See* 15 Cal. Code Reg. §§ 3483(g), (l). As a result, if officers' failure to timely respond was not, in fact, tantamount to a non-appealable "time expired" designation, the regulations failed to advise Mr. Coronel what he should do upon receiving no response. Without such guidance, the procedure was "so opaque" that it was "practically speaking, incapable of use" for Mr. Coronel. *Ross*, 578 U.S. at 643.

Once again, persuasive precedent from other circuits consistently holds that where prison procedures fail to specify what a prisoner must do in the face of a non-decision, the system is opaque and remedies are unavailable. For example, in *McGuire-Mollica v. Federal Bureau of Prisons*, 146 F.4th 1308, 1316 (11th Cir. 2025), the Eleventh Circuit held administrative remedies were unavailable where a plaintiff's submitted grievance was never filed by prison officials, and applicable "regulations provide[d] no instructions for how a prisoner should proceed if prison officials fail to file [the prisoner's] properly submitted [grievance]." In concluding that this ambiguity rendered the "administrative scheme . . . opaque," the court emphasized: "[P]rison officials cannot 'play hide-and-seek with administrative remedies' because '[t]hat which is unknown and unknowable is unavailable.'" *Id.* at 1316-17.

Similarly, in *Small v. Camden County*, 728 F.3d 265, 273 (3d Cir. 2013), the Third Circuit reversed a dismissal where a *pro se* prisoner failed to appeal a grievance after the prison never issued a decision. There, as here, the "procedures discuss[ed] only the appeal of a *decision* with which the inmate is not satisfied, and do not mention what must or even could be done by the inmate when a decision is never made." *Id.*

"Because [the] procedures did not contemplate an appeal from a non-decision, when [the prisoner] failed to receive even a response to the grievances addressing [the] incidents, much less a decision as to those grievances, the appeals process was unavailable to him." *Id.* Here, too, when Mr. Coronel never received a response to his grievance—a circumstance "not contemplate[d]" by the regulations, *id.* at 273—any further administrative remedy was "unknowable" and unavailable to him, *McGuire-Mollica*, 146 F.4th at 1317.

For these reasons, the district court erred in concluding that Mr. Coronel failed to exhaust administrative remedies. Even assuming that Mr. Coronel did not fully exhaust his administrative appeals, it was far from clear, based on the four corners of Mr. Coronel's amended complaint, that any further remedies were available to him.

* * *

In sum, the district court was wrong to dismiss Mr. Coronel's complaint for failure to exhaust administrative remedies based solely on information it affirmatively solicited from him. After all, it is black-letter law that exhaustion is an affirmative defense that Mr. Coronel was not required to plead. And even if the district court could have properly

considered the information it improperly compelled regarding exhaustion, dismissal was *still* inappropriate because Mr. Coronel's amended complaint showed that he *had* exhausted all remedies available to him. At the very least, any failure to exhaust available remedies was far from clear on the face of the pleadings.

This Court should reverse in a published opinion that makes clear that district courts may not dismiss *pro se* prisoners' complaints *sua sponte*, based on the affirmative defense of failure to exhaust, using information improperly solicited through court forms.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Dated: October 15, 2025

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 25-4873

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