No. 25-13222

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PAUL GEORGE BETTENCOURT,
Plaintiff-Appellant,

v.

DELISHA BRYANT,
Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Georgia
No. 7:23-cv-114-WLS-ALS
Hon. W. Louis Sands, Sr.

BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF GEORGIA, THE AMERICAN CIVIL LIBERTIES UNION OF ALABAMA, AND THE AMERICAN CIVIL LIBERTIES UNION OF FLORIDA IN SUPPORT OF THE PLAINTIFF-APPELLANT AND REVERSAL

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, *Amici* certify that the following individuals and entities may have an interest in the outcome of this case or appeal:

American Civil Liberties Union, *Amici*

American Civil Liberties Union Foundation, Counsel for ACLU *Amici*

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Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, *Amici* state that there are no corporate disclosures.

Dated: November 21, 2025

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

The **American Civil Liberties Union** ("ACLU") is a nationwide, nonprofit, nonpartisan organization, dedicated to the principles of liberty and equality embodied in the Constitution and this Nation's civil rights laws. Consistent with that mission, the ACLU established the National Prison Project ("NPP") in 1972 to protect and promote the civil and constitutional rights of incarcerated people. NPP has been involved in litigation concerning the interpretation of the Prison Litigation Reform Act, 42 U.S.C. § 1997e, since the statute's enactment, both as counsel and as *amicus curiae*. The **ACLU of Georgia**, the **ACLU of Alabama**, and the **ACLU of Florida** are state affiliates of the ACLU.

[1] This brief has not been authored, in whole or in part, by counsel to any party in this appeal. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than the *amici*, their members, or their counsel, contributed money that was intended to fund preparation or submission of this brief. All parties have consented to the filing of this brief.

STATEMENT OF THE ISSUES

Are administrative remedies "available" within the meaning of the Prison Litigation Reform Act when an incarcerated plaintiff is not allowed to file a grievance while he has two other grievances pending?

INTRODUCTION

Prison grievance systems often contain myriad procedural hurdles, structured to confuse the untrained, ensnare the unwary, and prevent even the most experienced or resourceful incarcerated person from successfully navigating them. Limiting the number of grievances an incarcerated person may have pending at any one time, as in the case at hand, is a particularly pernicious roadblock. When combined with lengthy response times and content requirements that only allow one issue to be raised per grievance, limitations on the number of pending grievances result in dramatic barriers that severely limit the claims a plaintiff can bring in court.

Incarcerated people who are unable to overcome these obstacles—devised, implemented, and enforced by prison administrators—are forced to watch their civil rights claims be dismissed by courts for failure to exhaust. But courts need not, and should not, reflexively rubberstamp

prison administrators' failure-to-exhaust assertions. The language of the PLRA itself provides that incarcerated people need not exhaust grievance procedures that are not "available." Many grievance processes are functionally unavailable to use, let alone exhaust. In those cases, as here, remedies should be found to be unavailable under the PLRA.

SUMMARY OF ARGUMENT

The PLRA's administrative exhaustion provision requires incarcerated people to exhaust administrative remedies before bringing suit in federal court. 42 U.S.C. § 1997e(a). However, the PLRA's plain language provides that incarcerated people need not exhaust grievance procedures that are not "available." *Id.*; *see also Ross v. Blake*, 578 U.S. 632, 635–36 (2016). Indeed, courts acknowledge the potential—and even likelihood—of administrative obfuscation and illusory access: Too often, prison grievance systems are a "simple dead end" or, practically speaking, "incapable of use." *Id.* at 633, 643. For example, where, as here, prison officials cap the number of grievances an incarcerated person may have pending at one time, they effectively eliminate any meaningful opportunity for redress. In such cases, courts must take the PLRA at its word and acknowledge that there are circumstances in which

administrative remedies are not "available" and therefore do not have to be exhausted. Georgia's grievance limits present just such a circumstance.

Properly exhausting administrative remedies is no small feat—it requires an incarcerated person to meticulously follow a multi-step grievance process immediately after an incident (in some prisons, grievances must be submitted within as little as 48 hours).[2] Prison officials can mandate difficult and impractical steps, and can deny a grievance for endless reasons.

Moreover, prison authorities devise their own grievance regimes with virtually no limitation on how complex or prohibitive the process may be. In some cases, the procedural barriers that prevent incarcerated people from successfully navigating the grievance process are by design. And the prison officials who build the obstacles are the same ones who benefit when incarcerated people stumble.

[2] Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America's Jails and Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. PA. J. CONST. L. 139, 148 (2008), https://repository.law.umich.edu/articles/1262/.

But the PLRA's exhaustion requirement was intended to limit frivolous litigation—not to keep meritorious cases out of court. For this reason, the statute contains a "built-in" exception to the exhaustion mandate: Incarcerated people need not exhaust administrative remedies that are not "available." *Ross*, 578 U.S. at 635–36. When deciding whether remedies are unavailable, courts must bear in mind the "real-world workings of prison grievance systems." *Id.* at 643. In the "real world," where a grievance regime limits the number of grievances an individual can have pending, remedies cannot be said to be "capable of use" by incarcerated plaintiffs, and courts must recognize the remedies as unavailable. *See id.*

Dutiful application of the unavailability exception is especially critical given the realities of the "real-world" prison environment: Incarcerated people have disproportionately high rates of disabilities and mental illnesses, and disproportionately low rates of English skills or literacy.[3] When grievance systems are excessively prohibitive by

[3] *See, e.g.*, E. ANN CARSON, BUREAU OF JUST. STATS., FEDERAL PRISONER STATISTICS COLLECTED UNDER THE FIRST STEP ACT, 2021 5 tbl. 1 (Nov. 2021), https://bjs.ojp.gov/library/publications/federal-prisoner-statistics-collected-under-first-step-act-2021; BOBBY D. RAMPEY, *ET AL.*, U.S. DEP'T OF EDU., HIGHLIGHTS FROM THE U.S. PIAAC

imposing limits on the number of grievances that may be filed, they effectively prevent people from exhausting administrative remedies—unconstitutionally barring access to the courts.

ARGUMENT

I. GRIEVANCE LIMITS CAN RENDER REMEDIES UNAVAILABLE AND UNCONSTITUTIONALLY BAR ACCESS TO THE COURTS.

A. Grievance Procedures that Limit the Number of Pending Grievances are Not "Capable of Use" Under the PLRA.

Limits on the number of pending grievances inevitably force people to forfeit serious and meritorious concerns, rendering remedies unavailable. The Georgia Department of Corrections grievance policy provides that incarcerated people may have no more than two grievances pending at a time; no grievance may include more than one issue; and each grievance can take nearly six months to process. *See* Doc. 30-2 at 4.[4] As a result, incarcerated people are only able to raise two issues every six months.

SURVEY OF INCARCERATED ADULTS: THEIR SKILLS, WORK EXPERIENCE, EDUCATION, AND TRAINING 6 tbl. 1.2 (Nov. 2016), https://nces.ed.gov/pubs2016/2016040.pdf.

[4] All citations to docket entries refer to the district court's docket unless otherwise noted.

In this case, the lower court held that Mr. Bettencourt failed to exhaust administrative remedies because he did not exercise "his option to withdraw a grievance to prioritize another one he considers more important to him personally." *Bettencourt v. Bryant*, No. 7:23-cv-114-ALS, 2025 WL 2327931, at *5 (M.D. Ga., Aug. 12, 2025). The court's opinion entirely abandons the reality of prison. It assumes that an incarcerated person will face no more than two issues requiring grievances at a time, notwithstanding that each grievance may remain pending for many months. It ignores that the timeline for processing those grievances is entirely controlled by prison officials. And it wrongly assumes that forced prioritization of grievances will inherently bring the most "important" constitutional violations to the surface.

Indeed, the district court's holding requires Mr. Bettencourt, and plaintiffs like him, to make a Hobson's choice to determine which claims to pursue and which to surrender—not because their claims are insignificant or without merit, but because of artificial and arbitrary constraints created by the prison's grievance protocols.

Should Mr. Bettencourt forfeit his stolen-shoe grievance and accept his new reality of wearing shoes fashioned from milk cartons? *See* Doc. 1-

2 at 13. Should he abandon any hope of redress for the prison's failure to safeguard his possessions while he was in the Acute Crisis Unit (ACU), where nearly everything he owned was stolen from his bunk? *See* Doc. 1-2 at 11–13. Or must he otherwise resign himself to the injustice of his treatment in the ACU? Recall that Mr. Bettencourt was (1) confined to a cell wearing only a paper gown in below-freezing temperatures, despite mental health staff's recommendations that he be provided a safety smock, blanket, and mattress; (2) subjected to unsanitary conditions and an environment that was excessively loud and cold; and (3) denied an adequate diet and opportunities to shower. *See* Doc. 1-2 at 8–13. For Mr. Bettencourt, withdrawing a grievance would not be a reasonable choice but a coerced forfeiture of justice that deprives him of basic relief.

For the next incarcerated person, it may be even more complicated: Imagine an incarcerated person who has a pending grievance seeking religious accommodations—and then has to choose whether to use his remaining grievance to raise concerns about his missing blood pressure medication or his uncontrolled insulin levels. For some, filing a grievance becomes a gamble that another serious issue will not arise during the long time period—here, up to 170 days, or nearly six months—that their

other grievances may be pending.[5] And because filing a grievance is a mandatory prerequisite to bringing a lawsuit in federal court, limiting the number of grievances that can be pending ultimately forces incarcerated people to surrender some of their civil rights claims.

But the PLRA's plain language includes an exception to the exhaustion requirement: Incarcerated people need not exhaust administrative remedies that are not "available." *Ross*, 578 U.S. at 635–36. And this exception to the mandatory exhaustion requirement "has real content." *Id.* at 642. For a grievance procedure to be "available," it must be "'capable of use' to obtain 'some relief for the action complained of.'" *Id.* (quoting *Booth v. Churner*, 532 U.S. 731, 738 (2001)). In cases where a grievance is rejected outright because of limitations on the number of pending grievances, remedies cannot be said to be "capable of use" for the "accomplishment of a purpose." *Id.* at 642–43 (holding that an administrative procedure is unavailable when "it operates as a simple

[5] *See* Doc. 25-4 at 17 ("The Warden/Superintendent has forty (40) Calendar Days from the date the Offender submitted the Grievance Form to deliver the decision to the Offender. A one-time, ten (10) Calendar Days-extension may be granted[.]"); *id.* at 21 ("The Commissioner or his/her designee has 120 Calendar Days after submission of the Central Office Appeal Form to deliver a decision to the Offender.").

dead end with officers unable or consistently unwilling to provide any relief").[6] *See also Eaton v. Blewett*, 50 F.4th 1240, 1243 (9th Cir. 2022) (holding remedies unavailable when grievance policy limited incarcerated plaintiff to four pending grievances at a time).

This Court must not hesitate to apply this congressionally created exception. Indeed, this Court has previously held that remedies that are "unknown and unknowable" are not "capable of use" and therefore unavailable. *Goebert v. Lee Cnty.*, 510 F.3d 1312, 1323 (11th Cir. 2007) (citing *Booth*, 532 U.S. at 738). It has held that remedies that "rational

[6] The district court erred when it determined that the limits on pending grievances did not create a "dead-end." But it also erred by treating *Ross*'s three unavailability examples as an exhaustive list. *See Bettencourt*, 2025 WL 2327931, at *5 (concluding that any given unavailability argument must "fall within . . . the three *Ross* exceptions to exhaustion"). Every circuit court that has directly addressed the question has held that the three scenarios described in *Ross* are exemplary, not exhaustive. *See Ramirez v. Young*, 906 F.3d 530, 538 (7th Cir. 2018) ("In *Ross*, the Court offered three examples of situations in which a finding of unavailability would be proper . . . [b]ut these were only examples, not a closed list, and to the extent the district court thought they were the latter, it erred."); *Andres v. Marshall*, 867 F.3d 1076, 1078 (9th Cir. 2017) ("By way of a non-exhaustive list, the Court recognized three circumstances in which an administrative remedy was not capable of use to obtain relief . . . ."); *Williams v. Priatno*, 829 F.3d 118, 123 n.2 (2d Cir. 2016) ("We note that the three circumstances discussed in *Ross* do not appear to be exhaustive, given the Court's focus on three kinds of circumstances that were 'relevant' to the facts of that case.").

inmates cannot be expected to use" due to threats of retaliation are not "capable of use" and therefore unavailable. *Turner v. Burnside*, 541 F.3d 1077, 1084 (11th Cir. 2008). This Court should similarly hold that grievance limits that bar plaintiffs from grieving at all render remedies not "capable of use" and therefore unavailable under the PLRA.

B. Grievance Procedures that Limit the Number of Pending Grievances Can Unconstitutionally Deny Incarcerated Plaintiffs Access to the Courts.

It is "established beyond doubt that prisoners have a constitutional right of access to the courts." *Bounds v. Smith*, 430 U.S. 817, 821 (1977); *see also Miller v. Donald*, 541 F.3d 1091, 1096–97 (11th Cir. 2008) ("Access to the courts is unquestionably a right of considerable constitutional significance[.]"). "[M]eaningful access to the courts is the touchstone[.]" *Lewis v. Casey*, 518 U.S. 343, 351 (1996) (quoting *Bounds*, 430 U.S. at 823). Yet here, the district court's decision denies access by requiring incarcerated people to pick and choose between valid civil rights claims to present to the court because of the grievance procedure's limitations. Forcing an incarcerated person to surrender a claim in order to initiate the grievance process on a subsequent concern prevents

"meaningful" access to the courts to litigate the surrendered claim, running afoul of *Bounds* and *Lewis*.

Because access to the courts is an incarcerated person's "remaining most fundamental political right[,]" *McCarthy v. Madigan*, 503 U.S. 140, 153 (1992), courts have long ensured that "indigent litigants are not completely prohibited from seeking judicial relief." *Miller*, 541 F. 3d at 1097. The Court should continue to do so here by finding remedies unavailable and allowing Mr. Bettencourt's case to proceed.

At a minimum, the canon of constitutional avoidance forecloses the district court's interpretation of the PLRA's exhaustion requirement. "Under the constitutional-avoidance canon, when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Where, as here, a grievance procedure's requirements have effectively barred a plaintiff from accessing the courts by limiting the number of grievances that may be filed, this Court should find remedies unavailable under the PLRA.

II. CONTRARY TO THE PURPOSE OF THE PLRA, PRISON ADMINISTRATORS CAN USE PROHIBITIVE GRIEVANCE SYSTEMS TO IMMUNIZE THEMSELVES FROM SUIT.

The Supreme Court observed that Congress enacted § 1997e(a) "to reduce the quantity and improve the quality of prisoner suits." *Porter v. Nussle*, 534 U.S. 516, 524–25 (2002). Congress also intended ensure judicial efficiency and to provide prison administrators "'time and opportunity to address complaints internally before allowing the initiation of a federal case.'" *Parzyck v. Prison Health Servs., Inc.*, 627 F.3d 1215, 1219 (11th Cir. 2010) (quoting *Woodford v. Ngo*, 548 U.S. 81, 93 (2006)).

Sponsor of the PLRA Senator Hatch explained, "I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised. The legislation will, however, go far in preventing inmates from abusing the Federal judicial system." *See* Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1633–34 (2003) (footnotes omitted). Representative Canady similarly stated that the PLRA's requirements "will not impede meritorious claims by inmates but will greatly discourage claims that are without merit." *Id.* at 1634 n.270.

In practice, however, because "each prison system is empowered to define its own grievance process," the PLRA's exhaustion requirement "marries the prison's interest in immunizing itself from liability with the ability to do so."[7] By imposing needlessly prohibitive requirements that make it impossible for incarcerated people to successfully complete the grievance process, prison administrators can prevent incarcerated people from enforcing their rights in federal court.[8] "It is their pocketbooks, their professional reputations, and in some cases their very livelihoods that are made vulnerable if a prisoner successfully exhausts his claims."[9]

Indeed, since the PLRA's enactment in 1996, several state corrections agencies' grievance procedures "have been updated in ways that cannot be understood as anything but attempts at blocking lawsuits."[10] Some of these tactics include reducing the timeframe within which incarcerated people must file their initial grievance and any subsequent appeals, and extending the timeframe within which prison

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[7] Tiffany Yang, *The Prison Pleading Trap*, 64 B.C. L. REV. 1145, 1150 (2023), https://bclawreview.bc.edu/articles/3081.
[8] *Id.*
[9] *See* Alison M. Mikkor, *Correcting for Bias and Blind Spots in PLRA Exhaustion Law*, 21 GEO. MASON L. REV. 573, 581 (2014).
[10] Derek Borchardt, *The Iron Curtain Redrawn Between Prisoners and the Constitution*, 43 COLUM. HUM. RTS. L. REV. 469, 473 (2012).

administrators are required to respond to those grievances.[11] These changes allow officials to effectively run out the clock on grievances until incarcerated people are left without formal recourse. Because "[i]t is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion[,]" *Jones v. Bock*, 549 U.S. 199, 218 (2007), there are no limits on prison administrators' ability to erect unnecessary procedural barriers.

This Court has previously sought to "reduce[] any incentive" that prison officials may have to prevent incarcerated plaintiffs from exhausting and to thereby "safeguard[] the benefits of the administrative review process for everyone." *Turner*, 541 F.3d at 1085. And it has condemned misuse of the PLRA's exhaustion requirement, holding that the exhaustion requirement should not be a means for defendants to "benefit from [an incarcerated person's] inability to find her way." *Goebert*, 510 F.3d at 1323. Yet, that is precisely the outcome for many,

[11] *Id.* at 506–10 (discussing, for example, changes in Arkansas Department of Corrections' grievances procedures from 1997 through 2011, including a reduction of the time afforded to incarcerated people to appeal grievance decisions from ten working days to five working days and the introduction of a provision requiring incarcerated people to agree to time extensions for administrators to issue grievance decisions).

including the plaintiff-appellant in this case, Mr. Bettencourt. Far from frivolous issues, Mr. Bettencourt attempted to pursue relief for grave violations: He was confined in a cell wearing nothing but a paper gown, even though mental health staff had recommended he be given a safety smock, blanket, and mattress. *See* Doc. 1-2 at 9–13. The cell was filthy, with feces and blood smeared across the walls, and the environment was unbearably loud and cold. *See* Doc. 1-2 at 7. He was deprived of sufficient food and denied the chance to shower. *See* Doc. 1-2 at 10. These are not the kinds of claims the PLRA sought to eliminate—they are precisely the claims it sought to preserve.

III. THE REALITY OF INDIVIDUAL VULNERABILITIES AND CHARACTERISTICS CREATE LAYERED OBSTACLES TO EXHAUSTION.

Courts must not assume a level playing field when it comes to navigating grievance procedures. Many incarcerated people face significant disadvantages. Many are managing symptoms of mental illness, which can complicate participation. Others have intellectual disabilities, making the process especially challenging. Low educational attainment and limited literacy further hinder their ability to engage effectively and meet the demands of the grievance system. Additionally,

many are coping with the aftermath of trauma, which can interfere with the skills needed to initiate and complete grievances.

To be clear: The obstacles in prison grievance procedures may stump even the most proficient incarcerated litigants. But many incarcerated people face additional barriers that further frustrate their chances of successful administrative exhaustion. Incarcerated people have disproportionately low rates of educational attainment,[12] English proficiency,[13] and literacy.[14] Any or all of these characteristics may make it harder for incarcerated people to successfully file and pursue a meritorious claim through the prison grievance system. Meanwhile, the

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[12] *See*, *e.g.*, E. ANN CARSON, BUREAU OF JUST. STATS., FEDERAL PRISONER STATISTICS COLLECTED UNDER THE FIRST STEP ACT, 2021 5 tbl. 1 (Nov. 2021), https://bjs.ojp.gov/library/publications/federal-prisoner-statistics-collected-under-first-step-act-2021 (finding that in 2020, 28.3 percent of people incarcerated in federal facilities did not have a high school diploma, general equivalency degree, or other equivalent certificate).

[13] *Id.* (finding that in 2020, 11.4 percent of people incarcerated in federal facilities reported English as a second language).

[14] BOBBY D. RAMPEY, *ET AL.*, U.S. DEP'T OF EDU., HIGHLIGHTS FROM THE U.S. PIAAC SURVEY OF INCARCERATED ADULTS: THEIR SKILLS, WORK EXPERIENCE, EDUCATION, AND TRAINING 6 tbl 1.2 (Nov. 2016), https://nces.ed.gov/pubs2016/2016040.pdf (finding 29 percent of people incarcerated in state and federal facilities fell into the two lowest levels of a six-level literacy scale, compared to 19 percent of people in the general population).

prevalence of disability and mental illness among incarcerated people is disproportionately high. According to the most recent survey by the Bureau of Justice Statistics, 38 percent of incarcerated people reported having a disability—a rate roughly two and a half times greater than adults in the general U.S. population.[15] The most commonly reported disability was "cognitive disability."[16] Similarly, 41 percent of all people incarcerated in state and federal facilities have a history of mental health problems,[17] compared to about 21 percent of the general population.[18] And about 13 percent of people incarcerated in state and federal facilities reported experiencing serious psychological distress during the last month.[19] Thus, many incarcerated people may be unable to fully

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[15] LAURA M. MARUSCHAK, *ET AL.*, BUREAU OF JUST. STATS., DISABILITIES REPORTED BY PRISONERS, at 1–2 (Mar. 2021), https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf.

[16] *Id.*

[17] LAURA M. MARUSCHAK, *ET AL.*, BUREAU OF JUST. STATS., INDICATORS OF MENTAL HEALTH PROBLEMS REPORTED BY PRISONERS, at 1 (June 2021), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/imhprpspi16st.pdf.

[18] NAT'L INST. OF MENTAL HEALTH, *Mental Illness*, fig. 1, https://www.nimh.nih.gov/health/statistics/mental-illness#part_2539 (last visited Nov. 4, 2025).

[19] MARUSCHAK, INDICATORS OF MENTAL HEALTH PROBLEMS REPORTED BY PRISONERS 5 tbl. 1; *see also* Margo Schlanger, *Prisoners with Disabilities*, *in* 4 REFORMING CRIMINAL JUSTICE: PUNISHMENT, INCARCERATION, AND RELEASE 295, 295 (Erik Luna ed., 2017),

comprehend and comply with the intricacies of the grievance procedure, such as grievance limits, strict timelines, content requirements, or one of many other potentially "bewildering features." *Ross*, 578 U.S. at 646.

Moreover, grievance procedures typically require filing within just a few days of an incident[20]—an almost impossible demand for someone grappling with the aftermath of trauma or injury. Trauma disrupts the very abilities needed to navigate grievance procedures: It impairs clear thinking, memory, and planning, while heightening fear and undermining emotional regulation.[21] Policies that demand grievance submission within days are therefore often unrealistic for individuals

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https://law.asu.edu/sites/default/files/pdf/academy_for_justice/14_Criminal_Justice_Reform_Vol_4_Prisoners-with-Disabilities.pdf (over half of convicted prisoners report symptoms of mental illness, chiefly mania and depression, and 15 percent report symptoms such as delusions or hallucinations).

[20] Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America's Jails and Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. PA. J. CONST. L. 139, 148 (2008), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2261&context=articles ("[I]f prisoners miss deadlines that are often less than fifteen days and in some jurisdictions as short as two to five days, a judge cannot consider valid claims of sexual assault, beatings, or racial or religious discrimination.") (footnote omitted).

[21] BESSEL VAN DER KOLK, THE BODY KEEPS THE SCORE 52–64, 258–64 (2014); JUDITH L. HERMAN, TRAUMA AND RECOVERY 56–61, 121 (1992).

who have just experienced a traumatic event, particularly for those with a history of trauma experiencing retraumatization.

The vast majority of incarcerated people have endured trauma before prison and during incarceration.[22] And within prison settings, individuals with a history of victimization face a heightened risk of multiple forms of re-victimization and retraumatization in prison.[23]

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[22] Seventy-seven percent of incarcerated women have experienced intimate partner violence, and 86 percent have survived sexual violence. *See* Shannon Lynch et al., U.S. DEP'T OF JUST., BUREAU OF JUST. ASSISTANCE, *Women's pathways to jail: The roles and intersections of serious mental illness and trauma* (Sept. 2012), https://ascdwc.com/wp-content/uploads/2013/02/https:__www.bja.gov_Publications_Women_Pathways_to_Jail.pdf. The rates for men are similarly high: 94 percent of incarcerated men have experienced an adverse childhood experience (ACE), and nearly two out of three formerly incarcerated men surveyed (62 percent) experienced between five and nine different ACEs at home. *See* IMPACT JUST., *The Things They Carry: Understanding Trauma and Cycles of Violence* (Aug. 2023), https://impactjustice.org/wp-content/uploads/The-Things-They-Carry-PDF.pdf [https://perma.cc/D4UL-5FJP]; *see generally* BRUCE WESTERN, HOMEWARD: LIFE IN THE YEAR AFTER PRISON 63–83 (2018); DANIELLE SERED, UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND THE ROAD TO REPAIR 3 (2019) (identifying exposure to violence as one driver of violence).

[23] Shelley Johnson Listwan et al., *Poly-Victimization Risk in Prison: The Influence of Individual and Institutional Factors*, 29 J. INTERPERSONAL VIOLENCE 2458, 2458–61 (Sept. 2014), https://nij.ojp.gov/library/publications/poly-victimization-risk-prison-influence-individual-and-institutional-factors.

Take Mr. Bettencourt, for example: After being sexually assaulted, he experienced a severe mental health crisis and became suicidal. In the Acute Crisis Unit, he was degraded and mistreated, malnourished for two months, and had all of his possessions stolen—yet he was still expected to summon what little strength he had left to undertake the Herculean task of navigating the grievance process, executing each step flawlessly, and, according to the district court, contemplating which of his constitutional violations to surrender and which to pursue.

The immediate effects of new trauma—and the exacerbation of prior trauma—can distort perceptions of safety, erode trust in authority, and drain the motivation and initiative required to complete multi-step bureaucratic processes within days of a stressful event.[24] Together, these effects make it extraordinarily difficult for someone to report harm, document events, or persist through repeated appeals.

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[24] *See* HERMAN, *supra* note 21; VAN DER KOLK, *supra* note 21

CONCLUSION

For the foregoing reasons, the Court should reverse the district court's dismissal, hold that remedies are unavailable under the PLRA when a grievance procedure's requirements prevent a plaintiff from filing a grievance by limiting the number of grievances that may be pending, and remand for further proceedings.

Date: November 21, 2025

Respectfully submitted,

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*Eleventh Circuit admission pending

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 4,268 words.

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 with 14-point Century Schoolbook font.

Dated: November 21, 2025

/s/ Jennifer A. Wedekind
Jennifer A. Wedekind

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I hereby certify that on November 21, 2025, I electronically filed this document with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit using CM/ECF. All participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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