No. 25-____

IN THE
Supreme Court of the United States

TOPAZ JOHNSON, IAN HENDERSON,

Petitioners,

v.

HIGH DESERT STATE PRISON; SYLVA, Sergeant; BRIAN KIBLER, Warden,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does 28 U.S.C. § 1915(b)(1) require each incarcerated plaintiff filing *in forma pauperis* to pay the full amount of a filing fee whether or not he is filing a joint civil action with other plaintiffs?

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Petitioners Topaz Johnson and Ian Henderson respectfully petition this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion (Pet. App. 1a-37a) is published at 127 F.4th 123. The order denying rehearing and rehearing en banc (Pet. App. 51a-65a) is published at 145 F.4th 1052. The district court's opinions (Pet. App. 38a-39a; Pet. App. 40a-41a; Pet. App. 42a-50a) are unpublished.

JURISDICTION

The judgment of the Ninth Circuit was entered on July 24, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Sections 1914 and 1915 of Title 28 of the United States Code are set out in full in the Statutory Appendix.

INTRODUCTION

The fee to file an action in federal district court is $350. 28 U.S.C. § 1914(a). That fee is assessed per suit, not per party, so when any two or more parties file a joint suit, they split the cost of that $350. *Id.*

Any two or more parties, that is, except for prisoners proceeding *in forma pauperis* (IFP), at least according to the Ninth Circuit below. Breaking ranks with the Sixth Circuit and joining the Third, Seventh, and Eleventh Circuits, the panel below held that prisoners proceeding IFP must *each* pay $350 when they file a joint suit. That's double, triple, quadruple, or more than even other *prisoners*—those with sufficient funds to avoid proceeding IFP—must pay.

As Judge Fletcher explained below, dissenting from the denial of rehearing en banc "in the hope the Supreme Court will grant certiorari," this case cries out for this Court's intervention. Pet. App. 65a. The split of authority is oft-acknowledged and longstanding. The question presented recurs frequently: Though this sort of fee assessment is hard to track on commercial databases, courts appear to have addressed the question more than *80* times in the past year alone. The stakes are high: For

prisoners, the difference between a $175 filing fee and a $350 filing fee amounts to a full year of labor and may require forgoing phone calls with family, medical care or sufficient calories. And the opinion below cannot be squared with the text of the PLRA.

This Court should grant certiorari.

STATEMENT OF THE CASE

A. Legal Background.

1. The filing fee for commencing a civil action in federal district court is set by 28 U.S.C. § 1914. Relevant here is the provision requiring "the parties instituting any civil action, suit or proceeding in such court . . . to pay a filing fee of $350." 28 U.S.C. § 1914(a). The fee to initiate an appeal—$600—is established in a similar manner. *See* 28 U.S.C. § 1913; Judicial Conference Schedule of Fees, *Court of Appeals Miscellaneous Fee Schedule* ¶ 1. If a plaintiff cannot afford the filing fee, they can request permission to bring a suit *in forma pauperis* ("IFP"). 28 U.S.C. § 1915(a). A court is authorized to waive or reduce a filing fee for a plaintiff who demonstrates that he is "unable to pay." 28 U.S.C. § 1915(a)(1).[1]

The Prison Litigation Reform Act (PLRA) changed that rule for IFP plaintiffs who are incarcerated. The relevant provision, codified at 28 U.S.C. § 1915(b)(1), mandates that "the prisoner shall be required to pay the full amount of a filing fee," albeit in installments.

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[1] Section 1914 also requires the court to "collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States." 28 U.S.C. § 1914(b). The Judicial Conference prescribes an additional administrative fee, but IFP litigants need not pay it. Judicial Conference Schedule of Fees, *District Courts Miscellaneous Fee Schedule* ¶14.

28 U.S.C. § 1915(b)(1). The PLRA did not change the amount of a filing fee for an IFP prisoner-plaintiff. To the contrary, the PLRA specifically commands that "[i]n no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action." 28 U.S.C. § 1915(b)(3).

2. Federal Rule of Civil Procedure 20 allows multiple plaintiffs to "join in one action" (that is, jointly file a single suit). Everyone agrees that if two or more *non*-incarcerated plaintiffs jointly file suit, the total required fee is still $350—each plaintiff is permitted to pay a portion of the whole. *See* 28 U.S.C. § 1914(a) ("the parties," plural, must pay "a," that is, single, "filing fee of $350"); Pet. App. 21a. And everyone agrees that the same rule applies to prisoner-plaintiffs who are not proceeding IFP. *Id.* Similar requirements govern appeals: All appellants who are not prisoners, and any prisoner appellants who are not proceeding IFP, can pay a single $600 fee to appeal a civil case. *See* Judicial Conference Schedule of Fees, *Court of Appeals Miscellaneous Fee Schedule* ¶ 1.

The PLRA did not say anything about cases where multiple IFP prisoners proceed jointly as plaintiffs.

B. Procedural Background.

1. On March 14, 2022, correctional officers at High Desert State Prison left petitioners Topaz Johnson and Ian Henderson to stand in dirty, urine-covered 2.5'x2.5' holding cages with their arms handcuffed behind their backs. Pet. App. 8a. Based on this incident, Messrs. Johnson and Henderson, along with a third prisoner, jointly filed a Section 1983 damages

action in the United States District Court for the Eastern District of California and filed an accompanying motion to proceed IFP. *Id.* The three men did not have a lawyer. *Id.*

The district court interpreted Section 1915(b)(1)'s command that "the prisoner shall be required to pay the full amount of a filing fee" to mean that *each* of the three IFP prisoner-plaintiffs had to pay the full $350. Pet. App. 42a-44a, 49a-50a. But the district court recognized that rule was in tension with Section 1915(b)(3)'s command that "in no event shall the filing fee collected exceed the amount of fees permitted by statute," because the "amount of fees permitted by statute" was $350, total, for the joint action. *Id.* The district court thus concluded the three men could not proceed jointly. *Id.* It dismissed Messrs. Johnson and Henderson from the case, leaving only their third co-plaintiff. *Id.*

The third co-plaintiff continued to litigate. After final judgment was entered in his case, Messrs. Johnson and Henderson appealed the order dismissing them from the case. Dist. Ct. ECF 22; Dist. Ct. ECF 25.

2. On appeal, in a 2-1 decision, the Ninth Circuit agreed with the district court that Section 1915(b)(1) required each IFP prisoner-plaintiff to pay $350. It acknowledged that it did not "write today's decision on a blank slate": Several other circuits had already weighed in on the question presented. Pet. App. 16a.

According to the panel majority, "the overall statutory scheme" of the PLRA, Pet. App. 14a, "contemplates a per-litigant approach," meaning that each litigant must pay the full cost of a filing fee, Pet.

App. 13a (cleaned up). In the panel majority's view, that meant that each prisoner had to pay a $350 filing fee for a single civil case. *See* Pet. App. 12a-13a. The majority did not dispute that its reading treated IFP prisoners worse than any other kind of plaintiff, including non-IFP prisoner-plaintiffs. *See* Pet. App. 22a-23a.

The panel majority disagreed with the district court's second holding. It did not believe that there was any tension between requiring each IFP prisoner-plaintiff to pay $350 and Section 1915(b)(3). It therefore concluded that Messrs. Johnson and Henderson could proceed jointly, so long as each paid the $350 filing fee.

3. Judge Graber dissented in part. She concluded that the PLRA allows IFP prisoner-plaintiffs to split the cost of a single filing fee, such that Messrs. Johnson and Henderson should each only have been obligated to pay $175. Because Rule 20 allows for joint suits, she found that the majority "misread[]" the PLRA when it overrode the provision that states "in no uncertain terms" that "[i]n no event shall the filing fee collected exceed the amount of fees permitted by statute." Pet. App. 31a-33a (quoting 28 U.S.C. § 1915(b)(3)).

She also explained that the majority's opinion "produces absurd results." Pet. App. 31a, 35a-36a. All agree that Section 1915(b)(1)—the provision the majority relied on for its conclusion—does not apply to non-IFP prisoners. Those prisoners can thus split a filing fee: Two non-IFP prisoner-plaintiffs proceeding jointly would pay $175 apiece, four $87.50 apiece, and so on. But IFP prisoner-plaintiffs—the most

impoverished litigants—would each pay $350, double, quadruple, or more what wealthier prisoners pay. *Id.*

Finally, because Judge Graber believed the PLRA allowed IFP prisoner-plaintiffs to split the cost of a filing fee, she agreed with the panel majority that there was no reason such plaintiffs could not file jointly. *Id.*

4. The Ninth Circuit denied petitioners' request for rehearing en banc over a dissent by Judge Fletcher, joined by Judge Graber. He disagreed with the panel's "exceedingly unnatural reading," reasoning that "[a]ll tools of statutory interpretation—plain meaning of the text, statutory coherence, congressional intent, Supreme Court authority, and practical reality—lead to a different conclusion." Pet. App. 52a. Noting the "[v]arying [v]iews in the Circuits," Judge Fletcher called on this Court to intervene: "I write the above in the hope that the Supreme Court will grant certiorari." Pet. App. 65a.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Deepens an Acknowledged Split.

1. As Judge Fletcher explained, Messrs. Johnson and Henderson would have been allowed to split the cost of a filing fee had they filed suit in a district court in the Sixth Circuit. Pet. App. 64a; *see also Hagan v. Rogers*, 570 F.3d 146, 154 (3d Cir. 2009) (acknowledging Sixth Circuit's view). For nearly thirty years, the Sixth Circuit has allowed IFP prisoner-plaintiffs to pay one filing fee per action, rather than per prisoner-plaintiff, when jointly filing suit.

A year after the PLRA's passage, the Sixth Circuit issued *In re Prison Litigation Reform Act*, 105 F.3d 1131 (6th Cir. 1997), holding, among other things, that multiple prisoners filing a joint action can split the cost of a single filing fee. *Id.* at 1137-38. This "unprecedented administrative order" was an "attempt to organize the chaos" wrought by the PLRA," and it established precedent regarding a number of legal questions about the new statute. *See McGore v. Wrigglesworth*, 114 F.3d 601, 603 (6th Cir. 1997). The Sixth Circuit reasoned that Section 1915 "does not specify how fees are to be assessed when multiple prisoners constitute the plaintiffs or appellants." *In re Prison Litigation Reform Act*, 105 F.3d at 1137-38. It concluded that, in the face of statutory silence, the usual rules apply: "[A]ny fees and costs that the district court or the court of appeals may impose shall be equally divided among all the prisoners." *Id.*

Two years later, the Sixth Circuit reaffirmed that holding in *Talley-Bey v. Knebl*, 168 F.3d 884 (6th Cir. 1999). At issue in *Talley-Bey* was the PLRA's provision regarding payment of costs, rather than the provision on payment of fees. *Id.* at 886-87. But the provision regarding costs is worded almost identically to Section 1915(b)(1): "[T]he prisoner shall be required to pay the full amount of the costs ordered." 28 U.S.C. § 1915(f)(2)(A). In the course of ruling that IFP prisoner-plaintiffs filing jointly could split costs, the Sixth Circuit thus also reiterated that such plaintiffs could also split fees: "[A]ny *fees* and costs that a district court or that we may impose must be equally divided among all the participating prisoners." *Id.* at 887 (emphasis added).

The panel majority below acknowledged that "the Sixth Circuit has arguably come to a different conclusion" but attempted to downplay the split, claiming that "district courts in that circuit are split on the precedential effect of these cases." Pet. App. 17a n.6. Not so. The panel majority pointed to exactly *one* case in nearly three decades that held the administrative order was not precedential. *Id.* (citing *Jones v. Fletcher*, No. Civ.A.05CV07-JMH, 2005 WL 1175960, at *6 (E.D. Ky. May 5, 2005)).[2] For comparison's sake, district courts in the Sixth Circuit have applied the rule allowing split filing fees nearly two dozen times in the past five years alone.[3] And

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[2] The two other cases the panel majority cited were cases declining to let petitioners proceed jointly for other reasons and opined on the filing fee issue only in dicta. *See Montague v. Schofield*, No. 2:14-CV-292, 2015 WL 1879590, at *5 (E.D. Tenn. Apr. 22, 2015) (severing all plaintiffs for misjoinder due to failure to file pleadings); *Calhoun v. Washington*, No. 21-10476, 2021 WL 1387782, at *1 n.1 (E.D. Mich. Apr. 13, 2021) (same, due to failure to sign pleadings).

[3] Order, *Donaldson v. City of Dayton Ohio Police Department*, No. 3:22-cv-368 (S.D. Ohio Jan. 30, 2023), ECF 4 (two IFP prisoner-plaintiffs each owe $175); Order, *Douglas v. Hinninger*, No. 3:25-cv-472 (M.D. Tenn. June 3, 2025), ECF 9 (same); Order, *Lewis v. Montgomery Cnty. Jail Staff*, No. 3:21-cv-859, (M.D. Tenn. Apr. 18, 2022), ECF 13 (dismissing one prisoner-plaintiff; remaining two IFP prisoner-plaintiffs each owe $175); Order, *Perkins v. Davidson Cnty.*, No. 3:23-cv-730 (M.D. Tenn. Apr. 8, 2024), ECF 14 (one IFP prisoner-plaintiff and one non-prisoner IFP plaintiff each owe $175); Order, *Sexton v. Core Civic Inc.,* No. 3:22-cv-489 (M.D. Tenn. Oct. 17, 2022), ECF 17 (four IFP prisoner-plaintiffs each owe $87.50); Order, *Parish v. Braffs*, No. 1:23-cv-53 (M.D. Tenn. Oct. 27, 2023), ECF 23 (two IFP prisoner-plaintiffs each owe $175); Order, *Nichols v. Parker*, No. 3:21-cv-698 (M.D. Tenn. Oct. 29, 2021), ECF 11 (same); Order, *Malone v. Vantell*, No. 3:23-cv-1255 (M.D. Tenn. Apr. 9, 2024), ECF 13 (same); Order,

every single district in the Sixth Circuit applies the rule from the administrative order.[4] There is no doubt

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Phomphanh v. Cpt. Little, No. 3:24-cv-65 (M.D. Tenn. Apr. 22, 2024), ECF 11 (same); Order, *Riley v. Slusher*, No. 3:24-cv-860 (M.D. Tenn. Sept. 26, 2024), ECF 9 (same); Order, *Comage v. Fisher*, No. 1:24-cv-1190 (W.D. Tenn. Dec. 4, 2024), ECF 21 (eight prisoner-plaintiffs each owe $43.75; dismissing five of the prisoner-plaintiffs and allowing three to proceed); Order, *Chapman v. Parker*, No. 1:22-cv-1229 (W.D. Tenn. Dec. 19, 2022), ECF 31 (two IFP prisoner-plaintiffs each owe $175); Order, *Butler v. Whitmer*, No. 1:20-cv-13421 (E.D. Mich. Mar. 26, 2021), ECF 13 (same); Order, *Earick v. MacMillian*, No. 1:21-cv-10819 (E.D. Mich. July 22, 2021), ECF 7 (three IFP prisoner-plaintiffs each owe $116.67); Order, *Stewart v. Washington*, No. 2:25-cv-10116 (E.D. Mich.), ECF 12 (four IFP prisoner-plaintiffs each owe $87.50); Order, *Ali v. Washington*, No. 2:25-cv-10846 (E.D. Mich. Feb. 13, 2024), ECF 14 (three prisoner-plaintiffs each owe $116.67); Order, *Richardson v. Whitmer*, No. 1:22-cv-854 (W.D. Mich. Sept. 21, 2022), ECF 5 (two IFP prisoner-plaintiffs each owe $175); Order, *Richards v. Washington*, No. 2:20-cv-194 (W.D. Mich. Oct. 14, 2020), ECF 4 (three IFP prisoner-plaintiffs each owe $116.67); Order, *Fuqua v. Harmon*, No. 1:20-cv-189 (W.D. Ky. Dec. 1, 2020), ECF 11, ECF 12 (two IFP prisoner-plaintiffs each owe $175); Order, *Wallace v. Louisville Metro Dep't of Corr.*, No. 3:22-cv-126 (W.D. Ky. Apr. 21, 2022), ECF 13, ECF 14 (same).

[4] In addition to the cases listed above, *see* Order at 1-3, *Mitchell v. Beshear*, No. 5:09-CV-00003-R (W.D. Ky. May 27, 2009), ECF 57; *Hubers v. McBee*, No. 2:18-cv-78 (E.D. Ky. May 15, 2018), ECF 6; *Rouse v. Michigan*, No. 2:17-CV-12276, 2017 WL 3394753, at *3 (E.D. Mich. Aug. 8, 2017); *Witherspoon v. Vinder*, No. 2:21-CV-40, 2021 WL 12295396, at *1 (W.D. Mich. Apr. 16, 2021); *Hendricks v. Ohio Dep't of Rehab. & Corr.*, No. 2:14-CV-01841, 2015 WL 401186, at *2 (S.D. Ohio Jan. 28, 2015); Order, *Pollard v. Phillips*, No. 4:20-cv-1868 (N.D. Ohio Feb. 12, 2021), ECF 58; *Miller v. Blackwelder*, No. 4:07-CV-14, 2007 WL 1079998, at *1 (E.D. Tenn. Apr. 9, 2007); Order, *Lewis v. Montgomery Cnty. Jail Staff*, No. 3:21-cv-859, (M.D. Tenn. Apr. 18, 2022), ECF 13; *Erby v. Tennessee*, No. 2:23-CV-02298-SHM-TMP, 2023 WL 10357657, at *3 (W.D. Tenn. Aug. 8, 2023).

that, had Messrs Johnson and Henderson filed suit in the Sixth Circuit, each would have owed $175 instead of $350.

The Sixth Circuit's administrative order is here to stay. The Sixth Circuit itself treats the issue as settled. *See, e.g.*, *Berryman v. Freed*, No. 17-1924, 2018 WL 3954209, at *1 (6th Cir. Aug. 14, 2018). And it's not clear who would litigate to argue that IFP prisoners should pay *more* in filing fees—the defendant sued by the prisoner doesn't have much of a stake in the prisoner's filing fees; the money goes to a court, not to him.

2. On the other side of the ledger, four circuits—the Third, Seventh, Ninth, and Eleventh—hold that 28 U.S.C. § 1915(b)(1) requires each IFP prisoner-plaintiff to pay the full amount of the filing fee whether or not they are proceeding jointly.

a. In *Hagan v. Rogers*, 570 F.3d 146 (3d Cir. 2009), the Third Circuit acknowledged that it was parting ways with the Sixth Circuit to hold that Section 1915(b)(1) requires IFP prisoner-plaintiffs filing jointly to each pay a full filing fee. *Id.* at 155. Judge Rendell, writing for the court, opined that requiring each prisoner-plaintiff to pay a full fee was "simply one price that a prisoner must pay for IFP status under the PLRA." *Id.* The Third Circuit relied on the statute's silence regarding multiple prisoner-plaintiffs proceeding jointly: "Nothing in § 1915(b) mentions joinder or indicates that Congress intended § 1915(b)(3) to serve as a bar to the collection of multiple individual fees from individual plaintiffs in a joint litigation." *Id.*

Judge Jordan concurred in that portion of the decision.[5] But he expressed doubts. The full filing fee per IFP prisoner-plaintiff approach "runs afoul of the emphatic mandate in § 1915(b)(3) that 'in no event' may the fee collected in a prisoner case exceed that collected in any other civil action or appeal," he explained. *Id.* at 160. "Having multiple prisoners in a single suit, each paying a full fee creates an 'event' that we are instructed should in no event be created." *Id.* at 161. And he described as "incongruous with the relevant statutory scheme" the result that in the case at bar, the Third Circuit would collect $6,300, "far in excess" of the fee collected to file "any other civil appeal." *Id.*

Judge Roth dissented. She believed the majority's reading was "incorrect because it violates 28 U.S.C. § 1915(b)(3) and misconstrues 28 U.S.C. § 1915(b)(1)." *Id.* at 164 (Roth, J., dissenting). As to the first, she believed Section 1915(b)(3) meant what it said: "*In no event*"—not even when multiple prisoners file a joint action—should the court collect a filing fee that "exceed[s] the amount of fees permitted by statute." *See id.* (discussing 28 U.S.C. § 1915(b)(3)) (emphasis added). As to the second, she explained that when multiple prisoners collectively pay the filing fee, "the full amount of *a* filing fee is paid," satisfying Section 1915(b)(1). *Id.* Judge Roth thus would have followed the Sixth Circuit's lead. *Id.* at 165.

b. In *Boriboune v. Berge*, 391 F.3d 852 (7th Cir. 2004), the Seventh Circuit addressed whether four

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[5] Judge Jordan dissented in part because he would have reversed the decision below on the ground that the prisoner-plaintiffs had not satisfied the standard for joinder. *Id.* at 162-64.

IFP prisoner-plaintiffs proceeding jointly could split the filing fee set by Section 1914(a). The "natural" reading of the statute, the court concluded, is that Section 1915 "specifies a per-litigant" approach to fees. *Id.* at 855-56. That is, each litigant must pay a full filing fee. *Id.* Allowing otherwise "would produce an administrative headache" and "would reduce the deterrence to frivolous litigation." *Id.* at 854.

c. The Eleventh Circuit came to a similar conclusion. In *Hubbard v. Haley*, 262 F.3d 1194 (11th Cir. 2001), the Eleventh Circuit considered the case of 18 IFP prisoner-plaintiffs. Recognizing "the problem of excessive prisoner litigation," the court felt that the best way to interpret "Congressional purpose in promulgating the PLRA" is to read Section 1915(b) as requiring that "each prisoner proceeding IFP pay[s] the full filing fee." *Id.* at 1197-98.

d. Thus, when the panel majority weighed in below, it noted that it was following the Third, Seventh, and Eleventh Circuits. Pet. App. 16a. Like its sister circuits, the Ninth Circuit read Section 1915(b) as contemplating a "per-litigant" approach rather than a "per proceeding" one. Pet. App. 15a, 17a. Like its sister circuits, the panel believed its holding would track with "Congress's intent 'to taper prisoner litigation.'" Pet. App. 17a (citing *Hubbard*, 262 F.3d at 1196). And like its sister circuits, the Ninth Circuit panel majority worried about the "administrative burdens" would befall district courts should IFP prisoner-plaintiffs be allowed to split a filing fee when proceeding jointly. *See* Pet. App. 19a.

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In sum, the arguments on all sides of the conflict have been fully ventilated in both majority and dissenting opinions. IFP prisoners filing jointly should not have to pay vastly different sums depending on whether they are filing in Louisville or Las Vegas, Memphis or Milwaukee. Only this Court can bring uniformity.[6]

II. The Question Presented Is Important, and This Is the Right Vehicle to Address It.

1. The hundreds of dollars at issue in this case are high stakes for prisoners.

Prisoners make almost no money behind bars. The nationwide average wage is 14 cents per hour, and in California, a prisoner might be paid as little as eight

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[6] The circuits that hold Section 1915(b)(1) requires each IFP prisoner-plaintiff to pay the full amount of a filing fee whether or not they are proceeding jointly are further split. The Eleventh Circuit holds that because Section 1915(b)(1) would require a full filing fee whether or not a prisoner is proceeding jointly, IFP prisoner-plaintiffs simply can never proceed jointly. *Hubbard*, 262 F.3d at 1198; *see also Hagan*, 570 F.3d at 162 (Jordan, J., concurring) (similar reasoning). The Third, Seventh, and Ninth Circuits, by contrast, hold that IFP prisoner-plaintiffs can still file suit jointly.

Should this Court reverse the Ninth Circuit, that split would disappear: The only reason the Eleventh Circuit gave for barring IFP prisoner-plaintiffs from filing suit jointly was that "the plain language of the PLRA requires that each prisoner proceeding IFP pay the full filing fee." *Hubbard*, 262 F.3d at 1198. If this Court were to clarify that the plain language of the PLRA requires no such thing, there would be no basis for the Eleventh Circuit's rule forbidding IFP prisoner-plaintiffs from joint filings.

cents per hour.[7] The difference between a $350 filing fee and a $175 filing fee (the $350 filing fee split two ways), then, may be as much as nearly 2,200 hours of work—more than a year of full-time labor. Even the highest earning prisoners in California would have to work close to a thousand hours to make the $350 required to file a single civil action. Pet. App. 63a (Fletcher, J., dissenting).

Moreover, that figure "assumes that all of the money" a prisoner earns "is being saved, rather than used to pay for the cost of," among other things, "food, medical copays, or communications with family." *Id.* But that assumption turns out to be wrong. Prisons around the country charge incarcerated people for their room and board, and that cost doesn't include many basic necessities, such as hygiene products (one estimate guesses that the average prisoner will need 10 hrs of labor to afford toothpaste and another 10 to afford deodorant).[8] Prisoner can rarely meet their nutritional needs through prison meals—the average state spends less than $3 per day per prisoner on food, and food is frequently rotten or otherwise unsafe to eat—and so must purchase additional calories at a

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[7] Wendy Sawyer, *How much do incarcerated people earn in each state?*, Prison Pol'y Initiative (Apr. 10, 2017) https://www.prisonpolicy.org/blog/2017/04/10/wages.

[8] Lauren-Brooke Eisen, America's Dystopian Incarceration System of Pay to Stay Behind Bars, Brennan Center for Justice (Apr. 19, 2023), https://www.brennancenter.org/our-work/analysis-opinion/americasdystopian-incarceration-system-pay-stay-behind-bars; Florian Zandt, How Overpriced Are Basic Necessities In Prisons?, Statista (Aug. 9, 2024), https://www.statista.com/chart/32824/hoursneeded-at-average-prison-job-wage-to-afford-selected-commissaryitems/

prison commissary.[9] Prisoners are excluded from Medicaid and must pay a copay that often is as much as an entire month's wages.[10] And communicating with family is pricey, too; one FCC study found that a 15-minute phone call might cost as much as $12.10.[11]

2. The question presented also arises frequently. It's hard to get an accurate count, because short orders denying IFP or joinder often are not available on commercial databases such as WestLaw or Lexis. *See Submission guidelines for court opinions*, Thomson Reuters, https://legal.thomsonreuters.com/en/support/gov/court-opinion-submission-guidelines; see also Case Law & Shepard's Editorial Process,

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[9] *See* Soble, L., Stroud, K., & Weinstein, M. (2020), *Eating Behind Bars: Ending the Hidden Punishment of Food in Prison*, Impact Justice, https://impactjustice.org/wp-content/uploads/IJ-Eating-Behind-Bars.pdf; *Cheap Jail and Prison Food Is Making People Sick. It Doesn't Have To*, Vera (Feb. 27, 2024), https://www.vera.org/news/cheap-jail-and-prison-food-is-making-people-sick-it-doesnt-have-to.

[10] Tiana Herring, *COVID Looks Like It May Stay. That Means Prison Medical Copays Must Go.*, Prison Pol'y Initiative (Feb. 1, 2022), https://www.prisonpolicy.org/blog/2022/02/01/pandemic_copays; Cecille Joan Avila, *Prison health care is only available if you can afford it*, Prism (Oct. 31, 2022), https://prismreports.org/2022/10/31/prison-health-care-hidden-costs.

[11] *See* Press Release, FCC, *FCC Caps Exorbitant Phone & Video Call Rates for Incarcerated Persons & Their Families* (Jul. 18, 2024), https://docs.fcc.gov/public/attachments/DOC-404087A1.pdf. The FCC recently announced it would waive compliance with an order that would have capped prices for prison phone calls. Press Release, FCC, *Carr Acts to Address Unintended Consequences of 2024 IPCS Order*, https://docs.fcc.gov/public/attachments/DOC-412597A1.pdf.

LexisNexis https://www.lexisnexis.com/pdf/LexisNexis_Case_Law_Shepards_29_Step_Editorial_Process.pdf. And while all dockets are available to view on PACER (for a fee), there are no comprehensive docket text search functions and queries are limited to coding entered per suit by a clerk. But even looking at this presumably limited subset of dockets and orders, counsel found at least *84* times in the past year that district courts have had to address the question presented.[12]

3. Even though this issue recurs frequently, a case presenting it will rarely come to this Court. The prisoners for whom the difference between a $175 and a $350 filing fee is critical are unlikely to file an appeal—thereby potentially incurring a *further* $600 filing fee—to challenge a district court decision. That's presumably why there have been only five circuit-court decisions on the question presented in 30 years, even though the issue comes up multiple times a week.

Where a prisoner is severed from a joint action—as Messrs. Johnson and Henderson were here—appealing is even harder. The order severing plaintiffs from a case may not be a final order. *See, e.g.*, Pet. App. 42a; 38a. So, the severed plaintiffs cannot appeal their dismissal immediately; instead, they must await a final order in a case to which they are no longer

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[12] Counsel reviewed all district court cases opened from September 1, 2024, through September 1, 2025, where the Nature of Suit (NOS) was coded as 550: Prisoner Civil Rights, and where the clerk had entered a plaintiff's name plus "et al" to indicate more than one plaintiff was proceeding jointly. This did not include any other prisoner petition NOS, and counsel did not view any docket that did not include an "et al" for plaintiffs.

parties to appeal. That means keeping track of a former co-plaintiff's case and then appealing within 30 days of the final order in *that* case—a tall order, to say the least, for an incarcerated, indigent pro se litigant.

Messrs. Johnson and Henderson managed to do just that, tracking the case they were dismissed from and appealing from the final judgment there. Dist. Ct. ECF 22; Dist. Ct. ECF 25. They also secured appellate counsel willing to pay their fees on appeal. This case is thus the rare vehicle that will allow this Court to address the question presented.

Nor is there any barrier to reaching the question presented. The issue was pressed and passed upon below. Whether or not IFP prisoner-plaintiffs should be permitted to split a filing fee when proceeding jointly was the only issue in dispute. *See* Resp. Br. at 1, 10, 13; *see generally* Pet. for Reh'g En Banc. And the issue was fully briefed below both on the merits and in a petition for rehearing en banc, and fully addressed in two published opinions, with multiple judges weighing on each side.

III. The Decision Below Is Wrong.

The Ninth Circuit's opinion conflicts with the text and structure of Section 1915, contradicts this Court's precedent, and produces absurd results. The panel majority's appeal to policy is misplaced and, in any event, can't trump the statute's text.

1. Start with the text. Section 1915(b)(3) states, in no uncertain terms, that "[i]n no event shall the filing fee collected" in a suit brought by a prisoner "exceed the amount of fees permitted by statute." The relevant statute, 28 U.S.C. § 1914, allows collection of only a

single filing fee per civil action, even if multiple "parties" (plural) join to file the action. 28 U.S.C. § 1914(a). Pet. App. 22a. The sections read together thus "absolutely forbid[] a district court from collecting even a penny more" than that single filing fee per civil action. *See* Pet. App. 33a (Graber, J., dissenting).

Section 1915(b)(1) doesn't change that analysis. That provision states: "[I]f a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). By its terms, that text does not explicitly address a suit filed jointly by multiple IFP prisoner-plaintiffs. 28 U.S.C. § 1915; Pet. App. 57a-58a. But the Dictionary Act mandates that "unless context indicates otherwise," words in the United States Code "importing the singular include and apply to several persons." 1 U.S.C. § 1; Pet. App. 33a-34a (Op. 32-33) (Graber, J., dissenting). So, when faced with several prisoners filing jointly, Section 1915(b)(1) would then read: "If prisoners" (plural) "bring a civil action," "the prisoners" (again, plural) "shall be required to pay the full amount of a filing fee."

The panel majority argued that "[e]ven if one reads subsection (b)(1) as requiring that 'the prisoners' pay the full amount of a filing fee, that says nothing about whether they must pay the fee collectively or separately." Pet. App. 20a-21a. But the sentence itself answers that question: "The *prisoners* must pay the full amount of a filing fee"—together. If Congress had wanted to indicate that the prisoners must pay the filing fee separately, it would have written: "*Each* prisoner must pay the full amount of a filing fee."

The panel majority also suggested that petitioners' reading of the statute "switched midstream" between Section 1915(b)(1) and Section 1915(b)(3) as to whether terms in the statute are plural. Pet. App. 12a. But pluralizing Section 1915(b)(3) doesn't change anything. The Dictionary Act would have that provision read: "In no event shall the filing fees" (now plural) "collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment." Pluralizing the word "fees" doesn't alter that provision's meaning—as this Court has held, Congress uses the singular "fee" and the plural "fees" "interchangeably." *Bruce v. Samuels*, 577 U.S. 82, 90 n.4 (2016). And "the amount of fees permitted by statute" is a total of $350 per civil action.

2. Allowing IFP prisoners filing jointly to split the $350 fee also comports with the rest of the statute. Take, for example, 28 U.S.C. § 1915(f)(2) which addresses taxation of costs against prisoners and contains language virtually identical to Section 1915(b). As in Section 1915(b)(1), "the prisoner shall be required to pay the full amount" (of costs, as opposed to filing fees). 28 U.S.C. § 1915(f)(2). Payment of costs is to be collected "in the same manner as is provided for filing fees" in Section 1915(b)(2). *See* 28 U.S.C. § 1915(f)(2)(B). And "[i]n no event shall the costs collected exceed the amount of costs ordered by the court"—virtually identical language to Section 1915(b)(3). *See* 28 U.S.C. § 1915(f)(2)(C).

As both respondents and the panel majority conceded, prisoners can split costs under Section 1915(f). It could hardly be otherwise—it would be absurd for a defendant to recover many times its

actual costs simply because multiple prisoners filed a joint civil action. See Pet. App. 57a-58a (Fletcher, J., dissenting). Under "ordinary principles of statutory construction," that should decide the matter: "[T]he results of these parallel statutory provisions likewise must be parallel." Pet. App. 34a-35a (Graber, J., dissenting); *see also* Pet. App. 57a-58a (Fletcher, J., dissenting).

The panel majority disagreed. It held that Section 1915(f)(1) required giving different meanings to the virtually identical language of Section 1915(b)(2) and Section 1915(f)(2). Section 1915(f)(1) begins: "Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings . . . ." The majority zeroed in on the "as in other proceedings" language, claiming that it distinguished Section 1915(f)'s costs provisions from Section 1915(b)'s fees provisions. Pet. App. 15a-16a. But it would be strange for Congress use such opaque language in Section 1915(f)(1) to signal that two almost entirely parallel provisions in the same statutory section should be interpreted differently. Even more to the point, the "as in other proceedings" language doesn't address how costs should be paid. Rather, it describes how "[j]udgment may be rendered" and thus addresses only whether a court may award costs in a prisoner suit at all. The panel majority was thus wrong to read that language to override the parallels between Section 1915(f) and Section 1915(b).

3. The decision below also contradicts this Court's precedent. In *Jones v. Bock*, 549 U.S. 199 (2007), this Court admonished that when Congress meant the PLRA to "depart from the usual procedural requirements," it "did so expressly." *Id.* at 212, 216. It

repeated that rule just last Term. *Perttu v. Richards*, 605 U.S. 460, 470 & n.2 (2025). The "usual procedural requirements" for filing fees are laid out in 28 U.S.C. § 1914(a): Multiple parties filing jointly owe a single filing fee and may split the cost. If Congress meant the PLRA to "depart from" that rule, it would have done so "expressly." It did not. *See* Pet. App. 61a (Fletcher, J., dissenting).

The panel majority resisted *Jones*, arguing it didn't apply because there is "no 'usual practice' for litigants proceeding IFP to pay anything." Pet. App. 22a. But by that logic, *Jones* itself featured no "usual practice." The question in *Jones* was whether exhaustion of prison remedies was an affirmative defense or must be pled. There's no "usual practice" of requiring exhaustion in the first place; non-prisoner litigants can generally file suit without exhaustion. *See Patsy v. Board of Regents*, 457 U.S. 496 (1982). Yet the Supreme Court had no trouble concluding that in other settings where exhaustion was required, the "usual practice" was for exhaustion to operate as an affirmative defense. This case is similar: In other settings where litigants *are* required to pay a filing fee, the "usual practice" is for them to be permitted to split it.

4. The decision below produces results that Judges Fletcher and Graber rightly called "bizarre." Pet. App. 35a (Graber, J., dissenting); Pet. App. 58a (Fletcher, J., dissenting). Section 1915 applies only to parties litigating in forma pauperis. So, everyone agrees that non-IFP prisoners—that is, prisoners who *have* sufficient funds to pay court costs up front, rather than by installment—*can* split the cost of a filing fee if they file a single action. *See* Pet. App. 23a. But IFP

prisoners—that is, those who *lack* the assets to pay a filing fee up front—must pay double, triple, or quadruple that amount. Pet. App. 36a (Graber, J., dissenting).

The panel majority acknowledged that its reading of the statute would mean that IFP prisoners proceeding jointly would have to pay multiples of what non-IFP prisoners must pay. By way of explanation, the panel majority claimed prisoners had a "choice": file jointly "like 'ordinary, non-indigent plaintiffs' and pay the filing fee upfront by splitting" the $350 fee; or file jointly under Section 1915 and "*each* pay" a $350 fee "by making 'monthly payments . . . . until the filing fees are paid.'" Pet. App. 22a-23a.

But two prisoners who could each afford to pay $175 upfront would not be able to proceed IFP in the first place. IFP status is reserved for litigants who *can't* afford to pay the fee upfront. By definition, then, a prisoner deemed IFP does not have the "choice" of paying $175 up front. His *only* "choice" is to pay in installments, and if the majority is right, his total bill will be at least twice as high as that of his non-IFP counterparts (and often even more than that).

The decision below leads to another strange result. The whole goal of the PLRA was to reduce the volume of prisoner lawsuits "submerg[ing]" the courts. *Perttu*, 605 U.S. at 464. Filing jointly does just that, turning two or more lawsuits into one. *See* Pet. App. 62a (Order 11) (Fletcher, J., dissenting); Pet App. 36a (Graber, J., dissenting). Yet on the panel majority's telling, the PLRA got *rid* of one important incentive for litigants to file jointly—the option of splitting a filing fee.

5. Without text, structure, precedent, or logic on its side, the panel majority fell back on policy: the purported "administrative difficulties that arise from a district court's attempt to apportion one fee among multiple prisoners." Pet App. 18a (citing *Boriboune* 391 F.3d at 856). But experience shows no such difficulties exist. For over 25 years, district courts in the Sixth Circuit have managed to apportion the filing fee just fine. The default rule in the Sixth Circuit is that multiple IFP prisoners proceeding jointly split the cost of the filing fee equally—two prisoners each pay $175, four prisoners $87.50, and so on. *See supra*, 10 n.4. It turns out simple division isn't beyond district courts' ken.

The panel suggested that the PLRA's collection scheme might complicate things. Pet. App. 17a-18a. It's not clear how. The PLRA contains two collection commands. First, the court calculates an initial partial filing fee, which is equal to "20 percent of the greater of" "the average monthly deposits" into a prisoner-plaintiff's account or "the average monthly balance" for the preceding six months. 28 U.S.C. § 1915(b)(1)(A)-(B). That calculation does not change depending on the amount of a filing fee: Whether a prisoner owes $350, $175, or $87.50, the calculation of 20 percent of his average monthly cashflow is the same. Collection then moves from the court to the prison. Each month, the prison must collect the equivalent of "20 percent of the preceding month's income," with the prison entitled to take anything above $10 in the prisoner's account to make that payment. 28 U.S.C. § 1915(b)(2). Again, it's not clear how fee splitting makes that any more complex: Whether the prisoner is paying $350, $175, or $87.50,

a prison must keep track of a prisoner's earnings and balance; either way, a prison will garnish his income each month; and either way, the prison will stop collecting once the bill sent by the court is paid in full, whether that bill is for $350, $175, or $87.50.

As a final administrative hurdle, the Ninth Circuit gestured at prisoner-plaintiffs' different "litigation histories." Pet. App. 18a (citing *Boriboune*, 391 F.3d at 856). That's presumably a reference to the PLRA's "three strikes" provision, under which IFP prisoners who have filed certain kinds of previously dismissed cases must pay the entire filing fee up front, rather than in installments. 28 U.S.C. § 1915(g). But—again—the Sixth Circuit handles prisoner-plaintiffs with different litigation histories just fine. *See, e.g.*, Order, *Dyer v. Sheriff of Montgomery Cnty. Jail*, No. 3:24-cv-300 (S.D. Ohio Aug. 1, 2025), ECF 9; Order, *Wright v. Deluca*, No. 2:24-cv-12302 (E.D. Mich. Mar. 11, 2025), ECF 18.

Regardless, policy considerations are no substitute for the statute's plain text. And that text squarely forecloses the Ninth Circuit's reasoning.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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OCTOBER 2025

STATUTORY APPENDIX

28 U.S.C. § 1914

(a) The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5.

(b) The clerk shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States.

(c) Each district court by rule or standing order may require advance payment of fees.

28 U.S.C. § 1915

(a)

(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma

pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)

(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

APPENDIX

PETITION APPENDIX
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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TOPAZ JOHNSON, *Plaintiff-Appellant*, v. HIGH DESERT STATE PRISON; SYLVA, Sergeant; BRIAN KIBLER, Warden, *Defendants-Appellees*.	No. 23-15299 D.C. No. 2:22-cv-01235-TLN-EFB OPINION
IAN HENDERSON, *Plaintiff-Appellant*, v. HIGH DESERT STATE PRISON; SYLVA, Sergeant; BRIAN KIBLER, Warden, *Defendants-Appellees*.	No. 23-15396 D.C. No. 2:22-cv-01235-TLN-EFB

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Argued and Submitted August 15, 2024
San Francisco, California

Filed January 27, 2025

Before: Susan P. Graber, Consuelo M. Callahan, and Lawrence VanDyke, Circuit Judges.

Opinion by Judge Callahan;
Partial Concurrence and Partial Dissent by Judge Graber

SUMMARY*

Prison Litigation Reform Act

Reversing the district court's denial of a joint application to proceed in forma pauperis brought by three California inmates and its dismissal of their jointly filed lawsuit, the panel held that the Prison Litigation Reform Act ("PLRA") does not prohibit prisoners from proceeding together in lawsuits, but it does require that each prisoner in the lawsuit pay the full amount of the filing fee.

The district court denied the inmates' joinder as co-plaintiffs and informed them that they could each proceed with their claims in separate lawsuits. The district court reasoned that if multiple prisoners were permitted to proceed with a joint action and each paid the full filing fee, as required by the PLRA, 28 U.S.C. § 1915(b)(1), the amount of fees collected would exceed the amount permitted by statute for commencement of the action, in violation of § 1915(b)(3), and the

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

apparent intent of Congress. The district court further found that lawsuits brought by multiple prisoners proceeding pro se are incompatible with Rule 20 of the Federal Rules of Civil Procedure, permitting permissive joinder, because such lawsuits present unique problems not presented by ordinary civil litigation.

The panel held that while § 1915(b) requires prisoners to each pay the full filing fee to commence an action, the statute poses no obstacle to prisoners joining in a lawsuit. The district court erred by looking at PLRA subsections 1915(b)(1) and (b)(3) in isolation and thereby failed to internally harmonize § 1915(b), which according to its terms poses no prohibition against multi-prisoner lawsuits. Prisoners may join in a lawsuit and proceed together under § 1915 so long as they each pay the full amount of a filing fee.
The panel further held that the district court abused its discretion inn denying plaintiffs' permissive joinder under Rule 20 based on hypothetical concerns that were not based on the record.

Partially concurring and partially dissenting, Judge Graber agreed with the majority opinion that the PLRA does not prohibit prisoners from proceeding jointly under 28 U.S.C. § 1915 and that the district court abused its discretion when it denied plaintiffs' request for permissive joinder. But she respectfully dissented from the holding that each plaintiff must pay a filing fee. In Judge Graber's view, the PLRA provides for only one filing fee per civil action.

COUNSEL

George Mills (argued) and Benjamin Gunning, Roderick & Solange MacArthur Justice Center, Washington, D.C.; Easha Anand, Roderick & Solange MacArthur Justice Center, San Francisco, California; for Plaintiffs-Appellants.

Martha P. Ehlenbach (argued) and Oliver C. Wu, Deputy Attorneys General; Neah Huynh, Supervising Deputy Attorney General; Monica N. Anderson, Senior Assistant Attorney General; Rob Bonta, Attorney General of California; Office of the California Attorney General, Sacramento, California; for Defendants-Appellees.

OPINION

CALLAHAN, Circuit Judge:

In an effort to address the large number of prisoner complaints filed in federal court, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-71. Among other reforms, the PLRA amended the statute governing in forma pauperis (IFP) proceedings, 28 U.S.C. § 1915. While § 1915 applied equally to all litigants prior to the PLRA, the amended statute created new rules specific to prisoners. One of these rules is that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1).

In July 2022, three inmates in a California state prison jointly filed suit in the Eastern District of California and applied to proceed IFP. The district court denied their request for joinder and severed their claims, holding that "the interplay of the filing

fee provisions" in the PLRA requires prisoners to file lawsuits separately. The district court also held that lawsuits with multiple prisoners proceeding *pro se* present "unique problems" that prohibit joinder under Rule 20 of the Federal Rules of Civil Procedure, such as the transfer of one or more plaintiffs to different institutions, the release of one or more plaintiffs on parole, and communication difficulties due to confinement.

We reverse. The PLRA does not prohibit prisoners from proceeding together in lawsuits, and the district court's denial of joinder was not based on the record before it.

I

A

The idea that all citizens should have access to the courts no matter their ability to pay can be traced back to the Magna Carta. *See* John MacArthur Maguire, *Poverty and Civil Litigation*, 36 Harv. L. Rev. 361 (1923). England codified this principle in the late 15th century, guaranteeing that "the poor Persons of this Land" could bring suit for "the Redress of Injuries and Wrongs to them" without paying court fees. 11 Hen 7 c.12 (1495). The right to proceed IFP was more checkered in American history, however. Some states considered proceeding IFP a common law or constitutional right, *see, e.g.*, *Spalding v. Bainbridge*, 12 R.I. 244, 244–45 (1879), while other states went "without provisions of even the most primitive sort to help poor litigants," Maguire, at 382–84. Then, in 1892, Congress codified the right to proceed IFP in federal courts so that no citizen would be denied an opportunity to commence an action

"solely because his poverty makes it impossible for him to pay or secure the costs." *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948); *see* Act of July 20, 1892, ch. 209, § 1, 27 Stat. 252, 252.

The 1892 Act permitted indigent citizens to "commence and prosecute to conclusion any . . . suit or action without being required to prepay fees or costs." 27 Stat. 252. It entitled an indigent litigant to proceed IFP by filing "a statement under oath" attesting to the inability to pay "because of his poverty." *Id.* The litigant was required to further attest that "he believes he is entitled to the redress he seeks." *Id.* Congress also vested courts with the discretion to dismiss the IFP action if "it [was] made to appear that the allegation of poverty is untrue, or if said court [was] satisfied that the alleged cause of action is frivolous or malicious." *Id.* In 1948, Congress recodified the IFP statute in 28 U.S.C. § 1915(a)–(e). *See* 62 Stat. 954–55. And in 1959, Congress expanded the right to any indigent "person." *See* Pub. L. No. 86-320, 73 Stat. 590 (replacing "citizen" with "person" in § 1915(a)). So from at least 1892 onwards, our nation ensured the right to proceed IFP, and indeed expanded the right, so that all segments of the population could commence federal lawsuits for free.

This changed with the PLRA. In the mid-1990s Congress began paying particular attention to the "sharp rise in prisoner litigation in the federal courts." *Woodford v. Ngo*, 548 U.S. 81, 84 (2006). The number of prisoner lawsuits had grown from 6,600 in 1975 to more than 39,000 in 1994, 141 Cong. Rec. S14408, S14413 (daily ed. Sept. 27, 1995) (statement of Sen. Bob Dole), and by 1995, prisoners were responsible for filing more than 25% of the lawsuits in federal court.

Administrative Office of the United States Courts, 1995 Federal Court Management Statistics 167. Through the PLRA, Congress enacted "a variety of provisions designed to bring this litigation under control" and to stem the rising tide of prisoner litigation that was overflowing the nation's dockets. *Woodford*, 548 U.S. at 84.[1]

One of the provisions designed to curb prisoner litigation was 28 U.S.C. § 1915(b).[2] Recognizing that a litigant whose filing fees are assumed by the public "lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits," *Neitzke v. Williams*, 490 U.S. 319, 324 (1989), Congress passed § 1915(b) to ensure prisoners "pay the fees that normally accompany the filing of a lawsuit," 141 Cong. Rec. S14413–14 (daily ed. Sept. 27, 1995) (statement of Sen. Bob Dole). Section 1915(b) thus departed from Congress's 100-year practice of permitting all litigants proceeding IFP—including prisoners—to commence lawsuits for free.

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[1] In addition to enacting the PLRA, the 104th Congress passed other legislation similarly designed to curb prisoner litigation. *See, e.g.*, The Antiterrorism and Effect Death Penalty Act of 1996, 110 Stat. 1214, 28 U.S.C. § 2244(d) (establishing a one-year statute of limitations); 141 Cong. Rec. S7651, S7657 (June 5, 1995) (statement of Sen. Bob Dole) ("If we really want justice . . . then we must stop the endless appeals and endless delays.").

[2] Other PLRA provisions designed in part to "reduce the quantity and improve the quality of prisoner suits," *Porter v. Nussle*, 534 U.S. 516, 524 (2002), include mandating administrative exhaustion, 42 U.S.C. § 1997e, prohibiting claims for emotional injury without a prior showing of physical injury, 42 U.S.C. § 1997e(e), early screening, 28 U.S.C. § 1915A, and adding a "three-strikes" penalty for prisoners who have filed "frivolous" litigation, 28 U.S.C. § 1915(g).

Section 1915(b) contains four subsections, each of which works to effect this change. Subsection (b)(1) requires that a prisoner pay "the full amount of a filing fee," including "an initial partial filing fee." Subsection (b)(2) provides the mechanism for paying and collecting this fee. Subsections (b)(3) and (b)(4) then serve as "safety-valve" provisions, *see Bruce v. Samuels*, 577 U.S. 82, 89–90 (2016), ensuring that the filing fee collected not "exceed the amount of fees permitted by statute," and that a prisoner not be prohibited from bringing suit notwithstanding the prisoner's inability to pay the initial partial filing fee.

B

Topaz Johnson, Ian Henderson, and Kevin Jones Jr. were all incarcerated in High Desert State Prison in California when they filed a lawsuit in the United States District Court for the Eastern District of California under 42 U.S.C. § 1983. They alleged that correctional officers forced them to stand in "dirty, urine smelling, holding cages in handcuffs" for nearly nine hours, causing them lower back pain, blistering on the bottom of their feet, and emotional pain. Jones Jr. further alleged that his handcuffs were "extra tight" and cut into his left wrist, causing swelling and blood loss. All three prisoners claimed that their conditions of confinement violated the Eighth Amendment and that they were falsely imprisoned. Jones Jr. further claimed that correctional officers used excessive force against him. Along with their complaint, the inmates filed a joint application to proceed IFP under 28 U.S.C. § 1915.

When screening the inmates' complaint, *see* 28 U.S.C. § 1915A, a magistrate judge denied the

inmates' joinder as co-plaintiffs and informed them that they could each proceed with their claims in separate lawsuits. In addition to denying joinder and severing Henderson and Johnson's claims, the magistrate judge dismissed Jones Jr.'s complaint without prejudice for failure to state a claim. The district court adopted the magistrate judge's findings and recommendations in full.

In the district court's view, "the interplay of the filing fee provisions in the [PLRA]" prevented inmates from bringing a lawsuit together. Looking to decisions from the Eleventh and Seventh Circuits, the court concluded that 28 U.S.C. § 1915(b)(1) "expressly requires" prisoners proceeding IFP to each pay the full filing fee for commencing an action, *see* 28 U.S.C. § 1914(a). The court then pointed to one of (b)(1)'s neighboring provisions, 28 U.S.C. § 1915(b)(3), which provides that "[i]n no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action." According to the district court, reading these two provisions together means that prisoners cannot bring a lawsuit together because if multiple prisoners were permitted to proceed with a joint action and each paid the full filing fee in accordance with § 1915(b)(1), the amount of fees collected would exceed the amount permitted by statute for commencement of the action in violation of § 1915(b)(3) and the apparent intent of Congress.

The district court also held that lawsuits brought by multiple prisoners proceeding *pro se* are incompatible with Rule 20 of the Federal Rules of Civil Procedure because they present "unique problems not presented by ordinary civil litigation."

The court explained that these type of cases may be subject to "delay and confusion" because one of the prisoners might be transferred to a different institution or released on parole, and because of the communication difficulties "presented by confinement."

After none of the inmates took action within the deadlines set by the magistrate judge's orders, the district court dismissed Johnson and Henderson's complaint without prejudice, and dismissed the entire action without prejudice. Johnson and Henderson timely appealed.[3]

II

"Interpretation of the PLRA is a question of law, which we review de novo." *Page v. Torrey*, 201 F.3d 1136, 1138–39 (9th Cir. 2000). We review a district court's denial of joinder for abuse of discretion, *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997), and review de novo the district court's legal conclusions underlying its decision, *E.E.O.C. v. Peabody W. Coal Co.*, 610 F.3d 1070, 1076 (9th Cir. 2010). A district court necessarily abuses its discretion if "it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990).

We have jurisdiction under 28 U.S.C. § 1291 because the district court's "dismissal of an action without prejudice [was] a final appealable order."

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[3] We consolidated Johnson's and Henderson's separate appeals and, at our request, the California Office of the Attorney General appeared on behalf of Defendants.

Laub v. U.S. Dep't of Interior, 342 F.3d 1080, 1084–85 (9th Cir. 2003).

III

The district court's interpretation of the PLRA was partially correct. While § 1915(b) requires prisoners to each pay the full filing fee to commence an action, the statute poses no obstacle to prisoners joining in a lawsuit.

A

In ascertaining the meaning of § 1915(b), "we begin, as always, with the statutory text." *Hernandez v. Williams, Zinman & Parham PC*, 829 F.3d 1068, 1072 (9th Cir. 2016). Section 1915(b) provides in relevant part:

> **(b)(1)** [I]f a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect . . . an initial partial filing fee . . .
>
> **(2)** After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

> **(3)** In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.
>
> **(4)** In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

28 U.S.C. § 1915(b).

The "amount of fees permitted by statute for the commencement of a civil action," *id.* § 1915(b)(3), is provided by 28 U.S.C. § 1914, which presently requires "the parties instituting any civil action . . . to pay a filing fee of $350."[4] In the district court's view, because "the full amount of a filing fee" for commencing an action is $350, if both Henderson and Johnson paid this amount—as required under subsection (b)(1)—then the "filing fee collected" from them together would exceed the $350 amount prohibited by subsection (b)(3).

This interpretation of § 1915(b) was incorrect. For starters, it switched midstream whether the fee-collecting scheme applied to one prisoner or multiple prisoners. When interpreting subsection (b)(1), the district court held that prisoners proceeding IFP must *each* pay the full filing fee. But then when interpreting subsection (b)(3), the court changed course and held

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[4] The fee for filing a civil action was increased from $250 to $350 under the Deficit Reduction Act of 2005, 120 Stat. 183.

that the statute considers collecting fees from *multiple* prisoners. However, there is "scant indication that the statute's perspective shifts partway through." *Bruce*, 577 U.S. at 89–90. Section 1915(b) contemplates a "per-litigant approach," *Boriboune v. Berge*, 391 F.3d 852, 856 (7th Cir. 2004), and subsection (b)(3) governs collecting fees from an individual prisoner no matter how many join in a lawsuit.

We know this because § 1915(b)'s subsections "stubbornly require" courts to assess and collect filing fees based on an individual prisoner's financial circumstances. *See Niz-Chavez v. Garland*, 593 U.S. 155, 161 (2021). For example, subsection (b)(1) requires that prisoners pay "the full amount of a filing fee," and when funds exist, pay "an initial partial filing fee" based on "the average monthly deposits to the prisoner's account" or "the average monthly balance in the prisoner's account from the 6-month period immediately preceding the filing of the complaint or notice of appeal." Subsection (b)(2) then provides the nuts-and-bolts for doing this, requiring that prisoners "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account" and directing "[t]he agency having custody of the prisoner" to send these payments "from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10." At bottom, the amount and timing of payments under § 1915(b) are "contingent on certain person-specific findings," *Boriboune*, 391 F.3d at 856, so the district court erred in viewing subsection (b)(3) as contemplating the collection of fees from multiple persons.

"It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016) (quoting *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012)). Courts must consider each of a statute's subsections, and "the statute's terms and sequencing," *New Prime Inc. v. Oliveira*, 586 U.S. 105, 111 (2019), to fully "construe what Congress has enacted." *Duncan v. Walker*, 533 U.S. 167, 172 (2001); *see also FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132, 133 (2000) (explaining that "a reviewing court should not confine itself to examining a particular statutory provision in isolation" but should interpret the statute "as a symmetrical and coherent regulatory scheme") (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995)). Here, the district court considered only half of § 1915(b)'s subsections, and in doing so failed to abide by this longstanding principle of statutory interpretation.

By analyzing subsections (b)(1) and (b)(3) as though they exist separately from subsections (b)(2) and (b)(4), the district court by definition did not consider the statute's "sequencing," *New Prime Inc.*, 586 U.S. at 111, and ultimately advanced an "erroneous view of the law." *Cooter & Gell*, 496 U.S. at 405. When read in context, we see that subsection (b)(3) works in tandem with subsection (b)(4) to serve as a "safety-valve" for Congress' new fee-collecting scheme. *Bruce*, 577 U.S. at 89–90. Both subsections ensure that "[i]n no event shall" the filing fee collected from a prisoner through their monthly payments "exceed the amount of fees permitted by statute," or

that a prisoner be prohibited from bringing a civil action even if "the prisoner has no assets and no means by which to pay the initial partial filing fee." Subsections (b)(1)–(2) thus set up the payment system, and subsections (b)(3)–(4) ensure that courts properly administer the system. *See Hagan v. Rogers*, 570 F.3d 146, 155 n.3 (3d Cir. 2009). And this system contemplates collecting fees from one prisoner at a time, so the "filing fee collected" in (b)(3) sensibly refers to the filing fee paid by each prisoner under (b)(1)–(2).

The district court's interpretation also conflated the filing fees required in IFP proceedings with the filing fees required in other proceedings. For instance, while both 28 U.S.C. §§ 1914 and 1917 contemplate paying one filing fee *per proceeding*, § 1915 contemplates paying one filing fee *per litigant*. The plain text of the different statutes makes this clear. Section 1914(a) requires that "the parties . . . pay a filing fee," and section 1917 requires a filing fee for "any separate or joint notice of appeal." Section 1915, by contrast, provides that "the prisoner shall be required to pay the full amount of a filing fee." Recall that prior to the PLRA there were no filing fee whatsoever for IFP litigants. As the Supreme Court has instructed, we are "entitled to assume that, in amending [§ 1915], Congress legislated with care." *Palmore v. United States*, 411 U.S. 389, 395 (1973). Had Congress intended to equate the paying of fees under §§ 1914 and 1917 with the paying of fees under § 1915, "it would have said so expressly, and not left the matter to mere implication." *Id.*

Indeed, an "express provision 'would have been easy,'" *id.* at 395 n.5, as demonstrated by § 1915(f),

which permits courts to award costs arising from IFP proceedings "as in other proceedings." 28 U.S.C. § 1915(f)(1).[5] This language shows that when Congress intended to equate IFP proceedings to other proceedings, "it knew how to do so." *Curtis v. United States*, 511 U.S. 485, 492 (1994). Congress' omission of similar language in § 1915(b) indicates that it did not intend to have IFP filing fees paid as they are in other proceedings. *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) ("Where Congress includes particular language in one section of a statute but omits it in another, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (cleaned up). Because "we read this omission to be intentional," *Cornell v. Lima Corporate*, 988 F.3d 1089, 1099 (9th Cir. 2021), we conclude that Congress did not want prisoners to split the filing fee as litigants do in "other proceedings" brought under §§ 1914 and 1917. *See Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) ("It is a fundamental principle of statutory interpretation that absent provisions cannot be supplied by the courts. To do so is not a construction of a statute, but, in effect, an enlargement of it by the court.") (cleaned up).

B

We do not write today's decision on a blank slate. We join the Third, Seventh, and Eleventh Circuits in holding that each prisoner proceeding IFP must pay

[5] Congress has included a variation of this language in the IFP statute since 1892. *See* 27 Stat. 252, 252 (1892) (permitting courts to award costs "as in other cases"); 62 Stat 869, 955 (1948) (same).

the full amount of a filing fee.[6] Like us, each of our sister circuits has reached this conclusion by looking to the plain language of the PLRA.

In *Hubbard v. Haley*, for example, the Eleventh Circuit considered an appeal from multiple Alabama state prisoners and held that "the district court properly applied the clear language of the PLRA to require that each prisoner pay the full amount of the filing fees." 262 F.3d 1194, 1198 (11th Cir. 2001). The Eleventh Circuit also looked at Congress' intent "to taper prisoner litigation" to conclude that "the Congressional purpose in promulgating the PLRA enforces an interpretation that each prisoner pay the full filing fee." *Id.* at 1197–98.

In *Boriboune v. Berge*, the Seventh Circuit agreed with the Eleventh Circuit and held that "it is hard to read [the statue's] language any other way." 391 F.3d 852, 855 (7th Cir. 2004). The Seventh Circuit further explained that requiring each prisoner to pay the full filing fee was a more sensible reading of the statute

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[6] Only the Sixth Circuit has arguably come to a different conclusion. *See Talley-Bey v. Knebl*, 168 F.3d 884, 887 (6th Cir. 1999); *In re Prison Litigation Reform Act*, 105 F.3d 1131 (6th Cir. 1997). But district courts in that circuit are split on the precedential effect of these cases. *See Jones v. Fletcher*, No. Civ.A.05CV07-JMH, 2005 WL 1175960, at *6 (E.D. Ky. May 5, 2005) ("Within the Sixth Circuit, it is unsettled whether the [PLRA] permits apportionment of filing fees"); *Montague v. Schofield*, No. 2:14-cv-00292, 2015 WL 1879590, at *4–5 (E.D. Tenn. Apr. 22, 2015) (agreeing with the Third, Seventh, and Eleventh Circuits that the PLRA counsels against the assessment of a single filing fee); *Calhoun v. Washington*, No. 21-10476, 2021 WL 1387782, at *1 n.1 (E.D. Mich. Apr. 13, 2021) (noting intra-circuit split in the Sixth Circuit for apportioning filing fees under the PLRA).

because of the administrative difficulties that arise from a district court's "attempt to apportion one fee among multiple prisoners whose litigation histories and trust balances differ." *Id.* at 856. The Seventh Circuit explained that "[t]hese difficulties vanish if we take § 1915(b)(1) at face value and hold that one price of *forma pauperis* status is each prisoner's responsibility to pay the full fee in installments . . . no matter how many other plaintiffs join the complaint." *Id.*

Then, in *Hagan v. Rogers*, the Third Circuit agreed with *Boriboune* that "the requirement for each prisoner to pay a full fee is simply one price that a prisoner must pay for IFP status under the PLRA." 570 F.3d 146, 155 (3d Cir. 2009); *id.*at 160 (Jordan, J., concurring in part and dissenting in part). And like us, the Third Circuit explained how such an interpretation of subsection (b)(1) can be read in harmony with § 1915(b)(3) because when "[r]ead in sequence, common sense indicates that § 1915(b)(3) merely ensures that an IFP prisoner's fees, when paid by installment, will not exceed the standard individual filing fee paid in full." *Id.* at 155–56. As the Third Circuit explained, section 1915(b)(3) "must be read in the context of § 1915(b) as a whole. . . . Reading the PLRA as requiring each joined IFP litigant to pay a full individual filing fee by installment, and no more, harmonizes the PLRA with Rule 20, and internally harmonizes the various provisions of § 1915(b)." *Id.*

We further note that district courts in the Second, Fourth, Fifth, Eighth, and Tenth Circuits have also held that prisoners cannot split the cost of a filing fee when proceeding under § 1915(b). A decision from the Southern District of New York provides a window into

how these courts consider the issue. In *Miller v. Annucci*, the district court held that the "prohibition in § 1915(b)(3) against collecting more than 'the amount of fees permitted by statute for the commencement of a civil action' does not cap the total fees collected from prisoners in a multiprisoner case at $350," but rather "prevents courts from collecting more than $350 in installment payments from *each* prisoner." No. 18-cv-0037, 2018 WL 10125145, at *3 (S.D.N.Y. Feb. 27, 2018). Next, turning to the PLRA's "principal purpose" of deterring frivolous prisoner lawsuits and appeals, the court held that "[a] filing-fee discount that increases with each additional prisoner [who] joins an action is not consistent with the PLRA's legislative history." *Id.* at *4 ("Multiprisoner actions would naturally proliferate if such an incentive existed."). Finally, the district court explained how the "administrative burdens associated with multiprisoner cases would also increase, both for the courts and for the prisons that administer the disbursement of prisoner funds under § 1915" if prisoners proceeding IFP were allowed to split the cost of a filing fee. *Id.*[7]

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[7] *See also, e.g.*, *Ofori v. Clarke*, No. 7:18-cv-00587, 2019 WL 4344289, at *4 (W.D. Va. Sept. 12, 2019) ("[T]he plain language of the PLRA requires that each plaintiff be assessed the full filing fee."); *Glenewinkel v. Carvajal*, No. 3:20-cv-2256-B, 2020 WL 5513432, at *2 (N.D. Tex. Sept. 14, 2020) ("Because one of the premier purposes of this provision was to curtail abusive prisoner tort, civil rights and conditions of confinement litigation, it necessarily requires that *each* prisoner who files suit pay the filing fee.") (internal quotation marks omitted); *Taylor v. United States,* No. 2:20-cv-00207, 2021 WL 11551663, at *2 (E.D. Ark. June 2, 2021) ("Each of the six in forma pauperis Plaintiffs will be assessed a separate filing fee"); *Cremer v. Conover*, No.

In sum, the weight of authority supports our conclusion that the PLRA requires each prisoner proceeding IFP in a multi-prisoner lawsuit to pay "the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). *See Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.") (internal quotations omitted). The district court erred in concluding that this requirement somehow prohibits IFP prisoners from proceeding together in a joint lawsuit. The district court's reasoning looked at subsections (b)(1) and (b)(3) in isolation and thereby failed to internally harmonize § 1915(b), which "according to its terms" poses no prohibition against multi-prisoner lawsuits. *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004).

C

Plaintiffs raise a number of arguments for why they can split the "full amount of a filing fee" under § 1915(b), but none are persuasive.

To begin, Plaintiffs rely on the Dictionary Act to argue that we should read section 1915(b)(1) as saying "if [prisoners] bring[] a civil action . . . in forma pauperis, [the prisoners] shall be required to pay the full amount of a filing fee." *See* 1 U.S.C. § 1. But Plaintiffs' reliance on the Dictionary Act "doesn't quite track." *Niz-Chavez*, 593 U.S. at 161. Even if one reads subsection (b)(1) as requiring that "the prisoners" pay

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09-3200-SAC, 2009 WL 3241583, at *1 (D. Kan. Oct. 1, 2009) ("[E]ach prisoner plaintiff in a non-habeas civil action is obligated to pay the full $350.00 district court filing fee over time").

the full amount of a filing fee, that says nothing about whether they must pay the fee collectively or separately.

Plaintiffs next contend that other sections in the IFP statute suggest they can split the fee to commence an action. For example, they argue that § 1915(b) "is a modification" of § 1915(a), which "ties the filing fee to the action, not the litigant." But as explained above, § 1915(b) is not a "modification" of § 1915(a); it is a complete departure from the 100-year history of permitting all indigent litigants to commence federal lawsuits for free. And it is unremarkable that § 1915(a) ties a litigant's inability to pay to an "action." Of course it does. Courts must decide whether the litigant can pay for *something*.

Plaintiffs' reliance on § 1915(f) is similarly unpersuasive. Congress added subsections (f)(2)(A)–(C) so prisoners would pay costs "in the same manner" as paying fees, but otherwise left intact subsection (f)(1)'s directive that costs be awarded by courts "as in other proceedings." The textual similarities between §§ 1915(b) and 1915(f) thus concern the manner of making payments, but that's it. *See Skinner v. Govorchin*, 463 F.3d 518, 522 (6th Cir. 2006). So while a court can apportion *costs* between multiple IFP litigants as they do "in other proceedings,"[8] it cannot apportion the *filing fee* between multiple IFP litigants as it might otherwise do "in other proceedings."

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[8] Federal Rule of Civil Procedure 54(d)(1) authorizes the award of costs "to the prevailing party." When there are multiple prevailing parties, we have held that courts may apportion the award of costs. *See Williams v. Gaye*, 895 F.3d 1106, 1133 (9th Cir. 2018).

Perhaps recognizing that neighboring sections do not help, Plaintiffs turn to neighboring statutes for support. Relying on *Jones v. Bock*, Plaintiffs argue that § 1915(b) preserved the "usual practice" of apportioning filing fees among co-plaintiffs as provided in §§ 1914 and 1917. 549 U.S. 199, 212 (2007). But there was no "usual practice" for litigants proceeding IFP to pay *anything*, so adding subsection (b) to § 1915 did not preserve any practice for indigent litigants at all. [9] And like the district court, Plaintiffs conflate the filing fees required for IFP prisoners with those required for litigants in other proceedings. While both §§ 1914 and 1917 contemplate paying one filing fee per proceeding, § 1915 contemplates paying one filing fee per prisoner. Had Congress intended to equate how IFP prisoners pay fees to how litigants pay fees "in other proceedings," *cf.* 28 U.S.C. § 1915(f)(1), it would have said so. *Palmore*, 411 U.S. at 395; *Keene Corp.*, 508 U.S. at 208.

Finally, "[u]nable to squeeze more from the statute's text," *New Prime*, 586 U.S. at 120, Plaintiffs point to the PLRA's legislative history and policy arguments to support their position. They contend that "lawmakers communicated an intent to treat indigent, IFP prisoners *like*—not *worse* than—ordinary, non-indigent plaintiffs for fee purposes." That's true, but this is precisely what the PLRA does. Through enacting § 1915(b), Congress gave prisoners two options: they can either file suit under § 1914 like "ordinary, non-indigent plaintiffs" and pay the filing

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[9] *Jones* also considered preserving "the usual practice *under the Federal Rules*," 549 U.S. at 212 (emphasis added), and not the "usual practice" that might have existed under a statute.

fee upfront by splitting the total amount however they choose, or they can file suit under § 1915 and each pay "the full amount of a filing fee" by making "monthly payments . . . until the filing fees are paid," 28 U.S.C. § 1915(b)(1)–(2).

While Plaintiffs assert that giving prisoners this choice produces an "absurd result" because indigent prisoners in a joint action will pay more under § 1915 than non-indigent prisoners under § 1914, the result makes practical sense. Take Plaintiffs' situation. On remand, Johnson and Henderson can proceed under § 1914 and decide amongst themselves how to apportion the cost upfront. For instance, they can each pay $175, or maybe one of them has more funds than the other and pays the entire $350.[10] Alternatively, they can proceed under § 1915 and each pay $350 over many months, and perhaps over many years. Which is better for them? That's not for us to decide. But by giving prisoners this choice, and by perhaps incentivizing prisoners to proceed under § 1914, Congress did indeed accomplish its goals of treating indigent IFP prisoners like "ordinary non-indigent plaintiffs" while simultaneously ensuring that prisoners retain access to court.

* * *

The district court's conclusion that Plaintiffs were barred from joinder because of the "interplay of the filing fee provisions in the [PLRA]" was wrong as a

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[10] This is yet another indication that Congress did not intend IFP prisoners to pay a filing fee "as in other proceedings." *Cf.* 28 U.S.C. § 1915(f)(1). Under § 1914, one of the parties can pay nothing if the other party covers the full amount of the filing fee. The PLRA was intended to ensure that each prisoner pays.

matter of law and thus constitutes an abuse of discretion. *Cooter & Gell*, 496 U.S. at 405. The PLRA poses no statutory obstacle to prisoners joining together in a lawsuit under § 1915. Prisoners may join in a lawsuit and proceed together under § 1915 so long as they each pay "the full amount of a filing fee."

IV

Even though the district court erred in interpreting the PLRA, Defendants still ask us to affirm the lower court's decision. In their view, while the district court might have misinterpreted the PLRA, this was not the sole basis for denying joinder because the court also considered "practical impediments" that would arise in managing joint litigation for *pro se* prisoners. It is true that the district court announced two bases for denying joinder, but the district court's second reason was also an abuse of discretion because its concern about "practical impediments" was not based on the record.

Rule 20(a) of the Federal Rules of Civil Procedure permits plaintiffs to join in a lawsuit if: (1) the plaintiffs assert any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences; and (2) there are common questions of law or fact. *Coughlin*, 130 F.3d at 1350. However, even if these "threshold" requirements are met, *Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir. 1980), district courts "must examine whether permissive joinder would 'comport with the principles of fundamental fairness' or would result in prejudice to either side," *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (quoting *Desert Empire*, 623 F.2d at 1375). This is because Rule 20,

like the other Federal Rules of Civil Procedure, "is designed to promote judicial economy, and reduce inconvenience, delay, and added expense." *Coughlin*, 130 F.3d at 1351; *see* 7 Wright & Miller, Federal Practice and Procedure § 1652 (3d ed.); *see also* Fed. R. Civ. P. 1. It is therefore within the district court's "inherent power" to deny joinder if it would undermine "the orderly and expeditious disposition" of the case. *Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (citations omitted).

When denying Plaintiffs' joinder under Federal Rule 20, the magistrate judge wrote:

> Rule 20(a) of the Federal Rules of Civil Procedure allows permissive joinder of plaintiffs when certain conditions are met. However, actions brought by multiple prisoners proceeding without counsel present unique problems not presented by ordinary civil litigation. For example, transfer of one or more plaintiffs to different institutions or release on parole, as well as the challenges to communication among plaintiffs presented by confinement, may cause delay and confusion.

While a district court has "broad discretion" in applying Rule 20, *Coleman*, 232 F.3d at 1297, the court here abused its discretion when basing its decision on hypothetical concerns that were without support in the record, *see United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc) (explaining that a court abuses its discretion when its application of a legal standard is "without 'support in

inferences that may be drawn from the facts in the record'") (quoting *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 577 (1985)). Indeed, the district court based its decision on no evidence at all, which necessarily is an abuse of discretion.

A recent decision from the Fourth Circuit illustrates the district court's error. In *Ellis v. Werfel*, four inmates commenced a *pro se* action in federal court alleging that the IRS unlawfully denied them all or part of their COVID-19 stimulus payments. 86 F.4th 1032, 1034 (4th Cir. 2023). The district court denied permissive joinder and severed the inmates' claims into four separate actions in part because of "practical considerations," such as "cell reassignments, lock downs, or personal disagreements [that] will often prevent plaintiffs from properly preparing joint pleadings." *Id.* at 1035–37. The Fourth Circuit held that the district court abused its discretion because "there was nothing in the record to support those findings," and explained that the court's "practical considerations" concern was "at most, abstract observations, amounting only to speculation that was contradicted by the evidence in the record before it." *Id.* at 1037.

The same applies here. The district court provided at most "abstract observations" about the problems presented by *pro se* prisoner lawsuits. Even if, in the district court's experience, actions like this one face "delay and confusion," the Federal Rules still require that the court tether its reasoning to facts in the particular case. When the district court denied joinder under Rule 20, its concerns amounted to "speculation" and were "contradicted by the evidence in the record." *Id.* For instance, the district court held

that *pro se* prisoners face "challenges to communication," but the record shows that Johnson, Henderson, and Jones Jr. each signed the complaint, and also signed the application to proceed IFP. This suggests that the Plaintiffs did not have "challenges to communication" that would prevent joinder under Rule 20, at least at the time they filed the complaint. While Plaintiffs *might* be transferred or released and *might* face communication challenges, these hypothetical concerns were not actually reflected in the record before the district court. And, if these hypotheticals ever came to fruition, the district court can then sever Plaintiffs from the lawsuit. *See* Fed. R. Civ. P. 21.

Defendants, however, argue that courts should be able to consider plaintiffs' "incarcerated status" when making determinations under Rule 20 and that the district court did not abuse its discretion in doing so here. We do not disagree in theory, but such a consideration must still be tied to the facts in a particular case. For example, do facts in the record support the inference that one of the prisoners will be released during the pendency of the lawsuit? *See Adams v. GEO Grp.*, No. 5:21-cv-00297, 2021 WL 1813182, at *2 (W.D. Okla. May 6, 2021). Or are the prisoners already located at different correctional centers? *See Clemons v. Basham*, No. 4:22-cv-00158, 2022 WL 444039, at *1 (E.D. Mo. Feb. 14, 2022). Or have the prisoners already failed to comply with filing requirements such that a court can infer that the prisoners actually do face communication challenges? *See Cullum v. Davis*, No. 15-cv-0057, 2016 WL 192609, at *2 (S.D. Ill. Jan. 15, 2016). In short, considering plaintiffs' "incarcerated status"

and considering plaintiffs' actual circumstances as required by the Federal Rules are not mutually exclusive. However, basing a decision to deny Rule 20 joinder on generalities untethered from the record in the particular case is an abuse of discretion. Stated differently, if the court relies only on general propositions, it by definition does not base its decision on "inferences that may be drawn from the facts in the record." *Hinkson*, 585 F.3d at 1262. This necessarily constitutes an abuse of discretion.

Defendants also argue that our holding will require district courts to receive evidence at the screening stage regarding the plaintiffs' ability to litigate as a group. They believe courts will need to engage in "extraneous evidence-gathering" regarding the plaintiffs' coordination capabilities, "all while ignoring the practical realties of *pro se* prisoner litigation." In Defendants' view, joint *pro se* prisoner litigation will "predictably cause delays," so it makes sense for district courts to deny permissive joinder at the outset without having to assess the facts in the record.

While we are sympathetic to this concern, Defendants' point to no instance where a district court underwent "extraneous evidence-gathering" or where the parties were prejudiced by permitting joinder at the outset. Indeed, Defendants cite a handful of cases where district courts presumably denied permissive joinder based on general concerns of multi-prisoner *pro se* litigation, but in each case the district court reached its decision at least in part

on plaintiffs' pleadings and actual circumstances.[11] We further expect that the defendants in a civil action will bring to the court's attention any

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[11] *See Smith v. Haley*, No. 23-cv-02043, 2023 WL 4426024 (N.D. Cal. July 10, 2023) (plaintiff sought to pursue claims "on behalf of others in a representative capacity"); *Clemons*, 2022 WL 444039, at *1 (plaintiffs were incarcerated at different correctional centers and only one of the three plaintiffs signed the complaint); *Evans v. Tharp*, No. 3:21-cv-00905, 2021 WL 3634175 (S.D. Ill. Aug. 17, 2021) (plaintiffs' claims arose out of different facts); *Adams*, 2021 WL 1813182, at *2 (Oklahoma Department of Corrections website indicated one of the prisoners "may be released to probation within a few months"); *Correa v. Ginty*, No. 7:20-cv-05791, 2020 WL 4676576, at *2 (S.D.N.Y. Aug. 12, 2020) (plaintiffs' claims did not stem from "one common set of facts"); *Ofori v. Clarke*, No. 7:18-cv-00587, 2019 WL 4344289, at *3 (W.D. Va. Sept. 12, 2019) ("[T]he complaint itself names numerous defendants and asserts numerous, unrelated claims."); *Cullum v. Davis*, No. 15-cv-0057, 2016 WL 192609, at *2 (S.D. Ill. Jan. 15, 2016) ("Plaintiffs Cullum and Adams are presently housed at different correctional institutions."); *Proctor v. Applegate*, 661 F. Supp. 2d 743, 756 (E.D. Mich. 2009) (plaintiffs' claims "involve several defendants and multiple prison facilities [which] necessarily require resolution of factual claims (including numerous individual exhaustion issues) that are not appropriately joined"); *Beaird v. Lappin*, No. 3:06-cv-00967, 2006 WL 2051034, at *4 (N.D. Tex. July 24, 2006) ("[H]aving carefully reviewed the complaint, it is impossible for the court to discern how the alleged conditions of confinement affected each Plaintiff.").

The only case cited by Defendants that denied permissive joinder entirely based on hypothetical concerns detached from the record is *Pratt v. Hendrick, et al.*, No. 3:13-cv-04557, 2014 WL 280626 (N.D. Cal. Jan. 24, 2014) ("Basic case management principles of delay reduction and avoidance of confusion call for *pro se* prisoner-plaintiffs to prosecute their claims separately."). *Pratt* was not appealed to the Ninth Circuit, but if it had been, we are confident this court would have corrected such an erroneous application of Rule 20.

impediments to the joint action. More to the point, Defendants' argument runs up against the longstanding standard for reviewing a lower court's discretionary decision-making. We review a district court's decision to deny joinder for abuse of discretion, which means the decision must apply Rule 20 in a way that is not "without support in inferences that may be drawn from the facts in the record." *Hinkson*, 585 F.3d at 1262. Defendants ask us to affirm a decision that is not tethered to any facts in the record other than that Plaintiffs are prisoners proceeding *pro se*. We decline to do so, and hold that the district court abused its discretion in denying joinder based on "abstract observations" about Plaintiffs' circumstances and "speculation" not supported by the record. *See Werfel*, 86 F.3d at 1037.

V.

We hold that the PLRA poses no obstacle to prisoners proceeding together in a lawsuit under 28 U.S.C. § 1915. The PLRA requires each prisoner in such a lawsuit to pay "the full amount of a filing fee," and ensures that courts do not collect from each prisoner more than "the amount of fees permitted by statute." We also hold that the district court abused its discretion when denying Plaintiffs' permissive joinder under Rule 20 based on hypothetical concerns that were not based on the record. Accordingly, we **REVERSE** the district court's decision.

GRABER, Circuit Judge, concurring in part and dissenting in part:

I agree with the majority opinion that the PLRA does not prohibit prisoners from proceeding jointly under 28 U.S.C. § 1915 and that the district court abused its discretion when it denied Plaintiffs' request for permissive joinder. But, for three reasons, I respectfully dissent from the holding that each plaintiff must pay a filing fee. In my view, the PLRA provides for only one filing fee per civil action. First, the PLRA's text strongly suggests that only one fee per action is owed. Second, if the statutory text is ambiguous, then the usual rule—one fee per action, which co-plaintiffs may share—applies. Third, the majority opinion's ruling produces absurd results.

A. The PLRA Makes Clear That Only One Filing Fee May Be Collected Per Action.

First and foremost, the majority opinion misreads the governing statute.

Title 28 U.S.C. § 1915(b) provides:

> (1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

> (A) the average monthly deposits to the prisoner's account; or
>
> (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.
>
> (2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.
>
> (3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.
>
> (4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

Subsection (b)(1) describes how a filing fee is to be paid "if a prisoner brings a civil action." (Emphasis added.) That wording, with "prisoner" in the singular, does not explicitly address, one way or another, what

happens when "prisoners" in the plural bring "a" single, joint civil action. But subsection (b)(3) provides, in no uncertain terms: "In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action." (Emphases added.) The commencement of "a" single civil action requires the payment of a single filing fee. The statute absolutely forbids a district court from collecting even a penny more than the full amount of the usual fees permitted by statute for the commencement of "a" civil action. A civil action brought by more than one plaintiff remains "a" civil action in the singular. And "in no event" means exactly that.

My interpretation is buttressed by an additional statute. Because subsection (b)(1) does not explicitly describe a civil action brought by more than one prisoner, we must consider how to read subsection (b)(1) when several prisoners jointly file a single civil action. Title 1, section 1 of the United States Code provides: "In determining the meaning of any Act of Congress, unless the context indicates otherwise[,] words importing the singular include and apply to several persons, parties, or things." "A civil action" cannot be pluralized because it is undeniable that several plaintiffs can proceed jointly in a single action. After pluralizing the remainder of the sentence, the relevant part of subsection (b)(1) would read: "[I]f . . . prisoner[s] bring[] a civil action . . . the prisoner[s] shall be required to pay the full amount of . . . filing fee[s]." Pluralizing subsection (b)(1) cannot result in more than one fee, because subsection (b)(3) forbids district courts from collecting more than the statutorily prescribed "amount of fees" necessary to

commence a single civil action: "In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action." Notably, subsection (b)(3) also uses a definite article, "the," instead of an indefinite article, "a," which is further evidence that the total amount of "the" filing fee cannot be multiplied even when several plaintiffs proceed jointly.

The majority opinion's conclusion is also inconsistent with § 1915(f), which states that, "[i]f the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered." 28 U.S.C. § 1915(f)(2)(A) (emphasis added). The text of § 1915(f)(2)(A) is the same as the text of § 1915(b)(1) in referring to "a prisoner." Applying the majority opinion's logic would mean that a defendant could be awarded many times its costs, because each prisoner would be liable for the full amount of costs. But the statute sensibly and plainly prohibits multiplying costs in exactly the same way it prohibits multiplying filing fees. Section 1915(f)(2)(C) provides: "In no event shall the costs collected exceed the amount of the costs ordered by the court." The only textual difference is that, in the cost section, the court is forbidden to collect more than "the amount of the costs ordered by the court," id., while in the filing-fee section the court is forbidden to collect more than "the amount of fees permitted by statute for the commencement of a civil fee collected exceed the amount of fees permitted by statute for the commencement of a civil action," id. § 1915(b)(3) (emphasis added). Under ordinary principles of statutory construction, the results of these parallel statutory provisions likewise must be

parallel: only one filing fee per action, and only the court-ordered amount of costs, may be collected. Cf. Mohamad v. Palestinian Auth., 566 U.S. 449, 456 (2012) (noting the presumption that a given term means the same thing throughout a statute); In re Cybernetic Servs., Inc., 252 F.3d 1039, 1051 (9th Cir. 2001) ("[W]e presume that words used more than once in the same statute have the same meaning throughout.").

B. Even If the Statute Were Ambiguous, Only One Filing Fee May Be Collected Per Action.

In the alternative, it can be argued that the PLRA is ambiguous with respect to a per-litigant versus a per-action filing fee, because the text of § 1915 is silent about the specific question of filing fees in multi-plaintiff actions. Ambiguity leads to the same result as the statutory interpretation that I have offered above. As the Supreme Court has explained, Congressional silence is "strong evidence that the usual practice should be followed" because, "when Congress meant to depart from the usual procedural requirements, it did so expressly." Jones v. Bock, 549 U.S. 199, 212, 216 (2007). The usual procedural requirement is one filing fee per civil action.

C. Reading the Statute to Allow Per-Litigant Filing Fees Leads to an Absurd Result.

Because the statute is clear, and because the Supreme Court has instructed us how to interpret it if it is ambiguous, I would stop there. But we also must analyze statutes to avoid absurd results. See Ma v. Ashcroft, 361 F.3d 553, 558 (9th Cir. 2004) ("[S]tatutory interpretations which would produce absurd results are to be avoided." (citing United

States v. Wilson, 503 U.S. 329, 334 (1992))). The majority opinion's interpretation yields absurd results.

Non-indigent prisoners who file a joint action pay a single fee. The majority opinion's reading of the statute means that indigent prisoners—those who have less or no money—would pay more than prisoners who have more money. That is a perverse result. More importantly, my reading of the statute is faithful to the Congressional intention that prisoners "pay the fees that normally accompany the filing of a lawsuit," 141 Cong. Rec. S14408-01, S14413 (Sep. 27, 1995) (statement of Sen. Bob Dole) (emphases added). The fees that normally accompany the filing of a single lawsuit comprise, of course, a single filing fee.

In addition, judicial economy is served by having plaintiffs with the same claim—such as the two plaintiffs here—bring a single action. See Bruton v. United States, 391 U.S. 123, 131 n.6 (1968) (stating that joinder is "designed to promote economy and efficiency and to avoid a multiplicity of trials" (citations omitted)). Incentivizing plaintiffs to file a single action furthers the goal of judicial economy. Requiring per-plaintiff fees destroys any such incentive and, instead, engenders additional lawsuits, along with their additional burdens on the district courts. Moreover, an action that is frivolous is no more frivolous if brought by several plaintiffs instead of one. Because joinder allows a defendant to ask the district court to dispose of many frivolous claims simultaneously, a per-action filing fee likely would reduce the number of frivolous lawsuits that a court confronts.

For all of these reasons, I respectfully dissent in part.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN JONES, JR., Plaintiff, v. HIGH DESERT STATE PRISON, et al., Defendants.	No. 2:22-cv-01235-TLN-EFB **ORDER**

Plaintiff Kevin Jones, Jr., is a state prisoner proceeding pro se and in forma pauperis in an action brought under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 3, 2022, the magistrate judge filed findings and recommendations herein which were served on Plaintiff and which contained notice to Plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has not filed objections to the findings and recommendations.

The Court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge's analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed November 3, 2022, are ADOPTED IN FULL; and

2. The Complaint by purported co-Plaintiffs Topaz Johnson and Ian Henderson is DISMISSED without prejudice.

DATED: January 2, 2023

Troy L. Nunley

United States District Court Judge

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN JONES, JR., Plaintiff, v. HIGH DESERT STATE PRISON, et al., Defendants.	No. 2:22-cv-01235-TLN-EFB **ORDER**

Plaintiff Kevin Jones, Jr., is a state prisoner proceeding pro se and in forma pauperis in an action brought under 42 U.S.C. § 1983. On August 31, 2022, the court denied permissive joinder of Topaz Johnson and Ian Henderson as co-plaintiffs in this action. ECF No. 11. The court informed each of the purported co-plaintiffs that if either wished to proceed with an individual action he must notify the court within fourteen days. *Id.* at 6. The court cautioned them that failure to do so would result in a recommendation of dismissal from this action. The time for acting has passed and neither of the purported co-plaintiffs have responded to the court's order. The court infers, therefore, that neither of them wishes to proceed with his case.

Accordingly, IT IS RECOMMENDED that the complaint by purported co-plaintiffs Topaz Johnson and Ian Henderson be dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge

assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: November 2, 2022.

Edmund F. Brennan

United States Magistrate Judge

APPENDIX D

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN JONES, JR., Plaintiffs, v. HIGH DESERT STATE PRISON, et al., Defendants.	No. 2:22-cv-01235-TLN-EFB (PC) ORDER

Pending before the court for screening is plaintiff Kevin Jones, Jr.'s civil rights complaint, purportedly brought along with co-plaintiffs, Topaz Johnson and Ian Henderson. ECF No. 1. The purported co-plaintiffs have signed the complaint and have joined in the application to proceed in forma pauperis. ECF No. 2.

I. Action Construed as Individual Suit Brought by Sole Plaintiff, Mr. Jones

The instant complaint is signed by Mr. Jones and two purported co-plaintiffs. ECF No. 1. As discussed below, each individual plaintiff must proceed with their own separate lawsuits.

Rule 20(a) of the Federal Rules of Civil Procedure allows permissive joinder of plaintiffs when certain conditions are met. However, actions brought by multiple prisoners proceeding without counsel present unique problems not presented by ordinary civil litigation. For example, transfer of one or more

plaintiffs to different institutions or release on parole, as well as the challenges to communication among plaintiffs presented by confinement, may cause delay and confusion. In addition, the interplay of the filing fee provisions in the Prison Litigation Reform Act of 1995 ("PLRA") suggests that prisoners may not bring multi-plaintiff pro se actions, but rather must each proceed separately.

To proceed with a civil action, each plaintiff must pay the $402 filing fee required by 28 U.S.C. § 1914(a) or request leave to proceed in forma pauperis and submit the affidavit and trust account statement required by 28 U.S.C. § 1915(a). The PLRA expressly requires that a prisoner, where proceeding in forma pauperis, pay the full amount of the filing fee. 28 U.S.C. § 1915(b)(1). This provision reflected Congress's intent to reduce the volume of frivolous prisoner litigation in the federal courts. *Hubbard v. Haley*, 262 F.3d 1194, 1196-97 (11th Cir. 2001); 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (statement of Sen. Jon Kyl) ("Section 2 will require prisoners to pay a very small share of the large burden they place on the federal judicial system by paying a small filing fee on commencement of lawsuits. In doing so, the provision will deter frivolous inmate lawsuits. The modest monetary outlay will force prisoners to think twice about the case and not just file reflexively."); *see also Oliver v. Keller*, 289 F.3d 623, 627-28 (9th Cir. 2002). In order not to undermine the PLRA's deterrent purpose, courts have agreed that prisoner-plaintiffs who proceed together in one action must each pay the full filing fee. *E.g., Boriboune v. Berge*, 391 F.3d 852, 855-56 (7th Cir. 2004); *Hubbard*, 262 F.3d at 1197-98. However, 28 U.S.C. § 1915(b)(3)

provides that "in no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action." If multiple prisoners were permitted to proceed with a joint action, and each paid the full filing fee in accordance with § 1915(b)(1) and the apparent intent of Congress, the amount of fees collected would exceed the amount permitted by statute for commencement of the action, in violation of § 1915(b)(3).

To avoid the problems related to case-management and required filing fees, permissive joinder of Kevin Jones, Jr., Topaz Johnson, and Ian Henderson as co-plaintiffs must be denied. They may each, however, proceed with their own claims in new actions. *See DirecTV, Inc. v. Leto*, 467 F.3d 842, 846 (3d Cir. 2006) (claims that are severed rather than dismissed may continue in a separate suit to avoid statute of limitations barrier that might arise in event of dismissal).

II. Plaintiff Jones's Request to Proceed In Forma Pauperis

Plaintiff Jones has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. His application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

III. Screening Order

a. Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.* § 1915A(b).

A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) "requires a complaint to include a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)). While the complaint must comply with the "short and plaint statement" requirements of Rule 8, its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To avoid dismissal for failure to state a claim a complaint must contain more than "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555-557. In other words, "[t]hreadbare recitals of the elements of cause of action, supported by mere conclusory statements do not suffice." *Iqbal*, 556 U.S. at 678.

Furthermore, a claim upon which the court can grant relief must have facial plausibility. *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

b. Discussion

Jones's complaint alleges the following:

Claim 1 alleges that defendant Sylva placed Jones in a holding cage for nine hours while he was handcuffed behind his back. ECF No. 1 at 5. The holding cage was filthy and smelled of urine. *Id.* Jones was given at least one bathroom break. *Id.* Jones's feet blistered from standing so long and he experienced lower back pain. *Id.*

Claim 2 alleges that after the bathroom break, Sylva directed a correctional officer to put Jones's handcuffs on "extra tight." *Id.* at 7. The correctional officer complied. *Id.* The handcuffs cut into Jones's left wrist causing swelling and blood loss. *Id.* Jones asserts these claims against defendant Sylva and Warden Brian Kibler. For the following reasons, they are not sufficient to survive screening.

In Claim 1, Jones purports to assert an Eighth Amendment conditions of confinement claim as well

as a state law claim of false imprisonment. The false imprisonment claim fails because Jones has not alleged compliance with the California Torts Claims Act.[1] The Eighth Amendment claim fails because the allegations do not show that the conditions in the holding cage deprived Jones of life's "minimal necessities," such as shelter, food, clothing, sanitation, medical care, or personal safety. *See Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). Routine discomfort inherent in the prison setting is not unconstitutional. *Id.*; *see also Diggs v. Doe*, No. 1:19-CV-00766-GSA-PC, 2020 U.S. Dist. LEXIS 183403, at *12 (E.D. Cal. Oct. 2, 2020) (allegations of being forced to stand for ten hours in a holding cage, without a bathroom break, failed to state a claim).

In Claim 2, Jones alleges he was tightly handcuffed for an unspecified amount of time. Cases finding that tight handcuffs amounted to excessive force have required allegations that the individual "was either in visible pain, complained of pain, alerted the officer to pre-existing injuries, sustained more severe injuries, was in handcuffs for a longer period of time, asked to have the handcuffs loosened or released, and/or alleged other forms of abusive

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[1] The California Torts Claims Act ("Act") requires that a party seeking to recover money damages from a public entity or its employees submit a claim to the entity *before* filing suit in court, generally no later than six months after the cause of action accrues. Cal. Gov't Code §§ 905, 911.2, 945, 950.2 (emphasis added). When a plaintiff asserts a claim subject to the Act, he must affirmatively allege compliance with the claim presentation procedure, or circumstances excusing such compliance, in his complaint. *Shirk v. Vista Unified Sch. Dist.,* 42 Cal. 4th 201, 209 (2007).

conduct in conjunction with the tight handcuffing." *Shaw v. City of Redondo Beach*, 2005 U.S. Dist. LEXIS 46361, at *28 (C.D. Cal. Aug. 18, 2005). Jones's cursory allegations are not sufficient to state a claim for excessive force in violation of the Eighth Amendment.

Finally, Jones has named Warden Kibler as a defendant simply because of his role as a supervisor, which is not a proper basis for liability. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

For these reasons, the complaint will be dismissed with leave to amend.

c. Leave to Amend

Any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). The complaint should also describe, in sufficient detail, how each defendant personally violated or participated in the violation of his rights. The court will not infer the existence of allegations that have not been explicitly set forth in the amended complaint.

The amended complaint must contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Any amended complaint must be written or typed so that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the "'amended complaint supersedes the original, the latter being treated thereafter as non-existent.'") (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).

Finally, the court notes that any amended complaint should be as concise as possible in fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual background which has no bearing on his legal claims.

IV. Conclusion

Accordingly, it is ORDERED that:

1. Permissive joinder of Topaz Johnson and Ian Henderson as co-plaintiffs in this action is denied.
2. The claims of Topaz Johnson and Ian Henderson are severed from this action;
3. If either Topaz Johnson or Ian Henderson wishes to proceed with his severed claim in a separate suit, he must so notify the court within fourteen days from the date of this

order.[2] Failure to do so will result in a recommendation that his claims be dismissed without prejudice.

4. Plaintiff Jones's request to proceed in forma pauperis (ECF No. 2) is granted.

5. Plaintiff Jones shall pay the statutory filing fee of $350. All payments shall be collected in accordance with the notice to the California Department of Corrections and Rehabilitation filed concurrently herewith.

6. The complaint (ECF No. 1) is dismissed with leave to amend by plaintiff Jones within 30 days from the date of this order. Failure to comply with this order may result in a recommendation that this case be dismissed for failure to state a claim upon which relief may be granted.

Dated: August 31, 2022.

Edmund F. Brennan

United States Magistrate Judge

[2] If so notified, the court will direct the Clerk of the Court to file a copy of the original complaint and in forma pauperis application in a new, separate action on behalf of that individual.

APPENDIX E

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TOPAZ JOHNSON, *Plaintiff-Appellant*, v. HIGH DESERT STATE PRISON; SYLVA, Sergeant; BRIAN KIBLER, Warden, *Defendants-Appellees*.	No. 23-15299 D.C. No. 2:22-cv-01235-TLN-EFB OPINION
IAN HENDERSON, *Plaintiff-Appellant*, v. HIGH DESERT STATE PRISON; SYLVA, Sergeant; BRIAN KIBLER, Warden, *Defendants-Appellees*.	No. 23-15396 D.C. No. 2:22-cv-01235-TLN-EFB

Filed July 24, 2025

Before: Susan P. Graber, Consuelo M. Callahan, and Lawrence VanDyke, Circuit Judges.

Order;
Statement by Judge W. Fletcher

SUMMARY*

Prison Litigation Reform Act

The panel denied a petition for panel rehearing and denied a petition for rehearing en banc in a case in which the panel held that the Prison Litigation Reform Act ("PLRA") does not prohibit prisoners from proceeding together in lawsuits but does require that each prisoner in the lawsuit pay the full amount of the filing fee.

Respecting the denial of rehearing en banc, Judge W. Fletcher, joined by Judge Graber, wrote that the panel majority in this case created a counterintuitive and atextual exception to the uniform rule that in ordinary civil litigation, including in class actions, when multiple plaintiffs join in a single suit under Fed. R. Civ. P. 20, the filing fee is $350. Under the panel majority's holding, in PLRA litigation, if multiple in forma pauperis prisoners join as plaintiffs in a single suit under Rule 20, they each owe the filing fee of $350. Because the plaintiffs are poor, they pay more. Judge W. Fletcher strongly disagrees with this reading of the PLRA. All tools of statutory interpretation—plain meaning of the text, statutory coherence, congressional intent, Supreme Court authority, and practical reality—lead to a different conclusion.

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* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

ORDER

Judge Callahan and Judge VanDyke voted to deny the petition for panel rehearing and rehearing en banc. Judge Graber voted to grant the petition for panel rehearing and recommended granting the petition for rehearing en banc.

The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 40. Judge Koh did not participate in the deliberations or vote in this case.

The petition for panel rehearing and rehearing en banc is **DENIED**. Dkt. 56.

W. FLETCHER, J., joined by GRABER, J., respecting the denial of rehearing en banc:

In this Prison Litigation Reform Act ("PLRA") case, the panel majority held that when multiple in forma pauperis ("IFP") prisoner-plaintiffs join under Rule 20 in a single suit, each plaintiff must pay a filing fee of $350. *Johnson v. High Desert State Prison*, 127 F.4th 123, 128–134 (9th Cir. 2025). Judge Graber dissented. *Id.* at 137. I called this case en banc to challenge the panel's holding. I respectfully disagree with my colleagues' decision not to grant rehearing en banc.

In ordinary civil litigation when multiple plaintiffs join in a single suit under Rule 20, the filing fee is $350. When plaintiffs file a class action, the fee is $350. In PLRA litigation, when multiple prisoner-plaintiffs join in a single suit under Rule 20 and can

afford to pay the entire filing fee up front, the fee is $350.

The panel majority in this case has created a counterintuitive and atextual exception to this uniform rule. Under the panel majority's holding, if IFP prisoners join as plaintiffs in a single suit under Rule 20, they each owe the filing fee of $350. If there are three plaintiffs, the filing fee for their single Rule 20 suit is $1,050. If there are ten plaintiffs, the fee is $3,500. And so on. In short, because the plaintiffs are poor, they pay more.

I strongly disagree with this reading of the PLRA. All tools of statutory interpretation—plain meaning of the text, statutory coherence, congressional intent, Supreme Court authority, and practical reality—lead to a different conclusion.

A. Plain Meaning of the Text

The controlling statutory language is contained in 28 U.S.C. §§ 1914(a) and 1915(b).

Here is the general filing fee requirement for civil suits in district court:

> **§ 1914. District court; filing . . . fees**
>
> The clerk of each district court shall require *the parties* instituting any civil action, suit or proceeding in such court … to pay a filing fee of $350[.]

28 U.S.C. § 1914(a) (emphasis added). Section 1914(a) tells us that a single filing fee of $350 is required for a civil suit in district court, regardless of the number of plaintiffs: "*[T]he parties*" are required "to pay a filing fee of $350." Section 1914(a) does not distinguish civil

suits brought by IFP prisoners from other civil suits. That is, § 1914(a) covers, without differentiation, "any civil action, suit, or proceeding" in district court.

Here is the full text the filing fee portion of the PLRA. It is applicable to IFP prisoner-plaintiffs who bring individual suits:

> **§1915. Proceedings in forma pauperis**
>
> (b)(1) Notwithstanding subsection (a), if *a* prisoner brings a civil action or files an appeal in forma pauperis, *the* prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—
>
> (A) the average monthly deposits to *the* prisoner's account; or
>
> (B) the average monthly balance in *the* prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.
>
> (2) After payment of the initial partial filing fee, *the* prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of *the*

> prisoner shall forward payments from *the* prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.
>
> (3) *In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action* or an appeal of a civil action or criminal judgment.
>
> (4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the partial filing fee.

28 U.S.C. § 1915(b) (emphases added).

Please note two things. First, § 1915(b) addresses only suits brought by single IFP prisoner-plaintiffs. The usage throughout § 1915(b) is singular—"*a* prisoner" and "*the* prisoner." Section 1915(b) says nothing about suits brought by multiple IFP prisoner-plaintiffs. Second, § 1915(b)(3) specifies that "in no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action." Section § 1914(a) specifies that the filing fee "permitted by statute" is $350.

The natural combined reading of §§ 1914(a) and 1915(b) is that when multiple IFP prisoner-plaintiffs join in a single civil action under the PLRA, the total

filing fee is $350. The panel majority has rejected this natural reading of §§ 1914(a) and 1915(b) in favor of an exceedingly unnatural reading.

B. Statutory Coherence

Section 1915(f)(2), the provision governing the payment of costs paid by IFP prisoner-plaintiffs, contains text parallel to that found in § 1915(b). Section 1915(f)(2) reads as follows:

> (A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.
>
> (B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection [(b)(2)].[1]
>
> (C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

Applying the panel majority's interpretation of § 1915(b) to the text of this nearly identical provision would yield an absurd result. According to the panel majority's interpretation, when costs are awarded against multiple IFP prisoner-plaintiffs who have

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[1] As presently codified, § 1915(f)(2)(B) contains a typographical error. It refers to the manner of making payments "as is provided for filing fees under subsection (a)(2)." That provision is (b)(2) rather than (a)(2). *See Draper v. Rosario*, 836 F.3d 1072, 1087 n.10 (9th Cir. 2016); *see also Talley-Bey v. Knebl*, 168 F.3d 884, 887 (6th Cir. 1999) (same). The alteration corrects that error.

joined under Rule 20, each prisoner-plaintiff would be responsible for paying the full "amount of the costs ordered by the court." The defendant in such a suit would then recover multiple times the costs he actually incurred solely by virtue of there being multiple plaintiffs. This bizarre result would be reserved only for cases in which the plaintiffs are prisoners proceeding IFP.

C. Congressional Intent

Legislative history further contradicts the panel majority's decision. Senator Bob Dole and Senator Jon Kyl were cosponsors of the PLRA.

Senator Dole addressed the filing fee requirement:

> Many prisoners filing lawsuits today in Federal court claim indigent status. As indigents, prisoners are generally not required to pay the fees that normally accompany the filing of a lawsuit. In other words, there is no economic disincentive to going to court.
>
> The Prison Litigation Reform Act would change this by establishing a garnishment procedure: If a prisoner is unable to fully pay court fees and other costs at the time of filing a lawsuit, 20 percent of the funds in his trust account would be garnished for this purpose. . . .
>
> When average law-abiding citizens file a lawsuit, they recognize that there could be an economic downside to going to court. Convicted criminals should

> not get preferential treatment. If a law-abiding citizen has to pay the costs associated with a lawsuit, so too should a convicted criminal.

Congressional Record–Senate, S14413 (Sept. 27, 1995). In describing the garnishment procedure established under what became § 1915(b), Senator Dole did not mention any possibility that the normal filing fee assessment would be changed for IFP prisoner-plaintiffs suing jointly under Rule 20. He compared suits by prisoner-plaintiffs to suits by "average law-abiding citizens" and said that prisoners should not get "preferential treatment." He did not say that prisoner-plaintiffs should get *worse* treatment.

Senator Kyl also addressed the filing fee requirement:

> Section 2 of the bill covers proceedings in forma pauperis. It adds a new section to 28 U.S.C. section 1915. The subsection provides that whenever a Federal, State or local prisoner seeks to commence an action or proceeding in Federal court as a poor person, the prisoner must pay a partial filing fee of 20 percent of the larger of the average monthly balance in, or the average monthly deposits to, his inmate account. The fee may not exceed the full statutory fee.

Congressional Record–Senate, S 14413 (September 27, 1995). Senator Kyl specifically mentioned the "full statutory fee" and said that the fee charged to a prisoner-plaintiff may not exceed that fee.

D. Supreme Court Authority

There is no Supreme Court case directly on point. But *Jones v. Bock,* 549 U.S. 199 (2007), comes very close. The Court tells us in *Jones* that we should read the PLRA against the background of existing procedural rules, and that we should follow those rules unless the PLRA specifically instructs otherwise.

In *Jones*, the Supreme Court reviewed an interpretation of the PLRA under which prisoner-plaintiffs were required to comply with three procedural requirements not clearly specified in the PLRA. The Sixth Circuit had held (1) that prisoner-plaintiffs must plead administrative exhaustion in their complaint rather than requiring defendants to raise exhaustion as an affirmative defense in their answer; (2) that prisoner-plaintiffs must identify in their administrative complaints filed in the prison all of the defendants that they would later sue; and (3) that prisoner-plaintiffs must plead in their complaint only claims that have been exhausted, on pain of having their entire complaint (including their exhausted claims) dismissed. The Court disagreed with the Sixth Circuit.

In rejecting the first requirement—that prisoners must plead exhaustion—the Court wrote that if Congress had intended in the PLRA to deviate from the usual pleading rule, it would have said so: "[W]hen Congress meant to depart from the usual procedural requirements, it did so expressly." *Id.* at 216. In rejecting the second requirement—that all of the defendants sued under the PLRA must have been identified in a prisoner's administrative complaint—

the Court wrote, "Nor does the PLRA impose such a requirement." *Id.* at 218. Finally, in rejecting the third requirement—that a prisoner-plaintiff's complaint contain only administratively exhausted claims—the Court relied on the fact that in enacting the PLRA, Congress did not indicate that it intended to deviate from the normal non-habeas pleading rule. The Court wrote, "If Congress meant to depart from this norm, we would expect some indication of that, and we find none." *Id.* at 221 (quoting *Robinson v. Page,* 170 F.3d 747, 748–49 (7th Cir. 1999)).

In three different ways, the Court in *Jones* tells us that the panel majority in this case was wrong to go beyond the express text of the PLRA. If Congress had intended in a subset of PLRA cases to deviate from the normal requirement of a single $350 filing fee, it would have "d[one] so expressly." *Id.* The express text of the PLRA does not "impose such a requirement." *Id.* at 218. "If Congress meant to depart from this norm [of a single $350 filing fee], we would expect some indication of that[.]" *Id.* at 221.

The Court tells us in *Jones* that when the PRLA is "silent" on an issue, this is "strong evidence that the usual practice should be followed." *Id.* at 212. The PLRA is silent on the issue whether multiple IFP prisoner-plaintiffs joined under Rule 20 should each pay a filing fee of $350. The panel majority should have followed the "usual practice"—indeed, the uniform practice—of charging a single filing fee of $350.

E. Practical Reality

Assessing a single filing fee in a Rule 20 suit filed by multiple IFP prisoner-plaintiffs makes practical

sense. Assessing a single filing fee provides an incentive for IFP prisoner-plaintiffs with a common issue to join in a single suit. The rule adopted by the panel majority foregoes that incentive, encouraging multiple suits by multiple plaintiffs when a single suit would be more efficient, for both the plaintiffs and the judiciary.

The issue presented in this case may seem esoteric, but it is not. The federal docket is replete with cases filed by prisoners seeking relief from unconstitutional practices and conditions.[2] Almost all of these prisoners are poor. Most prisoners enter prison without any reported earnings in the previous year. Most of those who do have reported income have earned very little.[3] Once incarcerated, they work for very low wages. In California, for example, federal prisons pay $0.08 to $0.37 per hour for their prisoners' labor.[4] To put that in perspective, even some of the

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[2] *Federal Judicial Caseload Statistics 2024*, U.S. Cts., https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2024-tables.

[3] Adam Looney & Nicholas Turner, *Work and Opportunity Before and After Incarceration*, Brookings Inst., 1–2 (Mar. 2018), https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf; *see also* Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, Prison Pol'y Initiative (July 9, 2025), https://www.prisonpolicy.org/reports/income.html.

[4] *Captive Labor: Exploitation of Incarcerated Workers*, ACLU & The Univ. of Chi. Law Sch. Global Hum. Rts. Clinic, 57–58 (Jun. 15, 2022), https://www.aclu.org/publications/captive-labor-exploitation-incarcerated-workers.

highest earning prisoners in California would have to work close to a thousand hours to make the $350 needed to file a single civil action. And that assumes that all of the money is being saved, rather than used to pay for the cost of their detention,[5] food,[6] medical copays,[7] or communications with family.[8] Given this

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[5] *See* Lauren-Brooke Eisen, *America's Dystopian Incarceration System of Pay to Stay Behind Bars*, Brennan Ctr. for Just. (Apr. 19, 2023), https://www.brennancenter.org/our-work/analysis-opinion/americas-dystopian-incarceration-system-pay-stay-behind-bars (noting that prisons charge inmates for room and board); *Is Charging Inmates to Stay in Prison Smart Policy?*, Brennan Ctr. for Just. (Sept. 9, 2019), https://www.brennancenter.org/our-work/research-reports/charging-inmates-stay-prison-smart-policy (same).

[6] *See Cheap Jail and Prison Food Is Making People Sick. It Doesn't Have To*, Vera (Feb. 27, 2024), https://www.vera.org/news/cheap-jail-and-prison-food-is-making-people-sick-it-doesnt-have-to (noting the gouging practices of commissaries, resulting in three out of five formerly incarcerated people reporting as being unable to afford anything from the commissary).

[7] Tiana Herring, *COVID Looks Like It May Stay. That Means Prison Medical Copays Must Go.*, Prison Pol'y Initiative (Feb. 1, 2022), https://www.prisonpolicy.org/blog/2022/02/01/pandemic_copays (noting 40 states and the federal prison system require medical copays for prisoners).

[8] *See* Nicole Loonstyn & Alice Galley, *Low-Cost Phone Calls Benefit Incarcerated People, Their Families, and Criminal Legal Institutions*, Urb. Inst. (Aug. 30, 2023), https://www.urban.org/urban-wire/low-cost-phone-calls-benefit-incarcerated-people-their-families-and-criminal-legal (noting that phone calls in jails and prisons cost $50 to $100 a month); Stephen Raher, *Please Mr. Postman: It's Time to Create a Special Postal Mail Rate for Incarcerated People*, Prison Pol'y Initiative (Aug. 17, 2022), https://www.prisonpolicy.org/blog/2022/08/17/postalrates-2

economic reality, a requirement that each indigent prisoner in a multiple-plaintiff Rule 20 case pay a $350 filing fee makes no sense.

F. Varying Views in the Circuits

The Sixth Circuit analyzed the then-new PLRA in *In re Prison Litigation Reform Act,* 105 F.3d 1121 (6th Cir. 1997). It pointed out the obvious: "The statute does not specify how fees are to be assessed when multiple prisoners constitute the plaintiffs[.]" *Id.* at 1137. Given the failure of the PLRA to deal with multiple-prisoner suits, the Sixth Circuit concluded that the ordinary filing fee rule under § 1914(a) should be followed, with the result that "any fees and costs that the district court . . . may impose shall be equally divided among all the prisoners." *Id.* at 1138; *see also Talley-Bey v. Knebl*, 168 F.3d 884, 887 (6th Cir. 1999) ("Thus, any fees and costs that a district court or that we may impose must be equally divided among all the participating prisoners.").

Three circuits have gone the other way. *See Hubbard v. Haley*, 262 F.3d 1194 (11th Cir. 2001); *Boribourne v. Berge*, 391 F.3d 852 (7th Cir. 2004); and *Hagan v. Rogers*, 570 F.3d 146 (3d Cir. 2009). All three circuits relied on § 1915(b). They concluded that § 1915(b) applies to IFP suits brought by multiple prisoner-plaintiffs, despite the fact that the text of

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(noting that "for someone in prison, it could take six hours of work to pay for one postage stamp – and that cost is about to go up even higher"); Nazish Dholakia, *The FCC Is Capping Outrageous Prison Phone Rates, but Companies Are Still Price Gouging*, Vera (Sept. 4, 2024), https://www.vera.org/news/the-fcc-is-capping-outrageous-prison-phone-rates-but-companies-are-still-price-gouging (documenting the price gouging practices of e-messaging services in prison).

§ 1915(b) consistently refers only to IFP suits brought by single prisoner-plaintiffs.

* * *

I write the above in the hope the Supreme Court will grant certiorari.