No. 13–1333

In the Supreme Court of the United States

ANDRÉ LEE COLEMAN,
A/K/A ANDRÉ LEE COLEMAN-BEY, PETITIONER

v.

TODD TOLLEFSON, ET AL.

ANDRÉ LEE COLEMAN, PETITIONER

v.

BERTINA BOWERMAN, ET AL.

ANDRÉ LEE COLEMAN, PETITIONER

v.

STEVEN DYKEHOUSE, ET AL.

ANDRÉ LEE COLEMAN, PETITIONER

v.

AARON J. VROMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF AMICI CURIAE OF THIRTY-THREE PROFESSORS IN SUPPORT OF PETITIONER

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[1] Counsel of record for both parties received notice of the intent to file this brief. *See* S.Ct. Rule 37. Counsel for both parties have consented, and their written consents have been filed with the Court. No counsel for a party authored this brief in whole or in part, and neither a party nor counsel for a party made any monetary contribution intended to fund the brief's preparation or submission.

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SUMMARY OF ARGUMENT

The Prison Litigation Reform Act's "three strikes" provision, 28 U.S.C. § 1915(g), bars a prisoner from bringing a civil action without prepaying the full amount of the filing fee only if that prisoner has three prior qualifying dismissals that have become final on appeal.

Reversing the Sixth Circuit's contrary reading of the statute in this case will not open the floodgates to frivolous prisoner litigation, as both the provisions of the Prison Litigation Reform Act (PLRA) and data from the Federal Judicial Center confirm.

First, meritorious litigation by prisoners is not as rare as conventional wisdom would have it. Prisoners obtain relief by judgment or settlement in over 10 percent of cases.

Second, the PLRA has cut the litigation rate per prisoner by more than half since 1995. The federal courts' docket management needs do not compel further restrictions on merits adjudication of prisoner lawsuits.

Third, other provisions of the PLRA—such as merits screening, the administrative exhaustion requirement, limitations on fee-shifting, and the prohibition on waiving the case filing fee even for indigent prisoners—keep the floodgates firmly shut.

Fourth, the longstanding division of authority on the issue presented allows for observation about the effects of each rule on litigation rates. The

evidence from the Circuits on each side of this split suggests that the majority three-strike rule will not increase prisoner litigation. The majority circuits, where a dismissal was a PLRA "strike" only upon appellate finality, generally did not experience higher rates of prisoner litigation after adopting that rule than before. Nor did the Seventh Circuit experience a drop-off in prisoner lawsuits after adopting the contrary rule.

There is no reason to believe adopting the majority rule will materially increase the lower federal courts' overall prisoner docket. But the Sixth and Seventh Circuit's minority view has a high cost: shutting the courthouse door to meritorious claims. Petitioner's interpretation of the "three strikes" rule, adopted by the majority of the Courts of Appeals, adheres more faithfully to the balance Congress struck in the PLRA than Michigan's alternative does.

ARGUMENT

1. Meritorious Prisoner Litigation is Not a Rarity.

Complaints about prisoner litigation are common, often bewailing both the volume and high percentage of meritless claims. "Needle-in-a-haystack" metaphors abound. But the metaphor is inapt. *See, e.g.,* Hon. Jon O. Newman, *Pro Se Prisoner Litigation: Looking for Needles in Haystacks*, 62 Brooklyn L. Rev. 519 (1996) (questioning whether several well-publicized cases of ostensibly frivolous prisoner litigation were in fact frivolous). In fact, prisoners are no more litigious

than everyone else, and more than a tenth of their cases succeed in some way, even after the PLRA.

Even before the Prison Litigation Reform Act, prisoners filed fewer lawsuits per capita than the population at large. Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1575–78 (2003). In 1993, filings from state and federal courts reflect that members of the public filed 56 state and federal lawsuits per 1,000 citizens—the vast majority in state court. Prisoners, by comparison, filed an estimated 33 state and federal civil lawsuits per 1,000 inmates—the majority in federal court. Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. at 1573–77 (25 civil federal cases per thousand inmates, and an estimated 8 more in state court). Today, in 2012 and 2013, prisoners filed around 25,000 new federal civil cases per year, at a far lower per capita rate of approximately 10 lawsuits per 1,000 prisoners.[2] (Current state filing figures are not available.)

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[2] In 2012, prisoners filed 25,515 civil rights and prison conditions lawsuits in federal district courts, representing 8.9% of the 285,260 new civil cases. In 2013, prisoners filed 25,334 suits, representing 9.3% of the 271,950 new civil cases. *Judicial Business of the United States Courts*: *2013 Annual Report of the Director of the Administrative Office of the United States Courts*, Table C-2, Cases Commenced, By Basis of Jurisdiction and Nature of Suit, available at http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/C02Mar13.pdf (last viewed December 4, 2014). These figures all exclude habeas cases.

Further, before the PLRA, prisoners obtained a judgment or settlement in about 15 percent of cases. Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. at 1587–90; *id.* at 1692.[3] Similarly, in fiscal year 2012, prisoner civil rights cases in federal court were resolved in the plaintiff's favor by judgment or settlement 11.1 percent of the time. Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Enters Adulthood*, Univ. of Mich. Public Law and Legal Theory Research Paper Series No. 427; Univ. of Mich. Law & Economics Research Paper Series No. 14–020, forthcoming 5 U.C. Irvine L. Rev., at 13–14 (2015), at http://ssrn.com/abstract=2506378; *see also* Alexander Reinert, Measuring the Success of *Bivens* Litigation and Its Consequences for the Individual Liability Model, 62 Stan. L. Rev. 809, 836 n. 138 (2010) (15 percent success rate for prisoner *Bivens* cases).

This Court should not entertain the inaccurate perception that meritorious prisoner litigation is truly a "needle in a haystack." Even after surmounting all of the PLRA's obstacles to prisoner litigation, 11 percent of prisoner cases end with the plaintiff obtaining some type of relief. In recent years, this Court's own docket has featured prisoners with legitimate claims who sued or appealed *pro se*. *See, e.g., Holt v. Hobbs*, No. 13–6827; *Millbrook v. United States*, 133 S. Ct. 1441 (2013); *Erickson v. Pardus*, 551 U.S. 89 (2007).

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[3] The success rate is calculated by summing voluntary dismissals, recorded settlements, and litigated resolutions in plaintiffs' favor. *Id.*

Fittingly, even as it sought to reduce frivolous prisoner litigation by passing the PLRA in 1996, Congress never intended to bar legitimate claims. *See, e.g.*, 141 Cong. Rec. S14418 (Sept. 27, 1995) (statement of Sen. Hatch, introducing S. 1279, a similar earlier version of the PLRA, as an antidote to frivolous prisoner litigation); 141 Cong. Rec. S14627 (Sept. 29, 1995) (Statements of Sen. Hatch) ("Indeed, I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised."); *id.* at S14628 (Statement of Sen. Reid) ("If they have a meritorious lawsuit, of course they should be able to file. I support that."); *id.* (Statement of Sen. Thurmond) ("[T]his amendment will allow meritorious claims to be filed, but gives the judge broader discretion to prevent frivolous and malicious lawsuits filed by prison inmates.").

These legislators believed that a flood of frivolous prisoner claims risked diluting the courts' ability to give fair consideration to potentially meritorious cases. Senator Kyl specifically held out a 50 percent reduction in frivolous filings as a worthwhile goal that would free up judicial resources for adjudication of more substantial claims. 141 Cong. Rec. S14628–29 (Sept. 29, 1995). Thus, the PLRA's proponents sought to restore a balance between docket control and access to the courts. But because they believed that balance had been upset by abuse of the prior regime's permissiveness, the PLRA focused on giving courts more docket control tools.

2. Prisoner Litigation Has Declined Dramatically Since the PLRA's Enactment

Historical data from the Federal Judicial Center reveals that the PLRA has achieved its proponents' aims of reducing prisoner litigation in federal court. After the statute's passage, prisoner litigation decreased dramatically. Litigation rates first declined sharply in the years immediately after the PLRA's passage and then generally stabilized afterwards. Even the absolute volume of litigation in federal court about prison conditions and prisoner civil rights has markedly declined nationwide since the PLRA's passage in 1996, despite the growth in prison population:

PRISONERS AND PRISONER CIVIL RIGHTS FILINGS IN FEDERAL DISTRICT COURT, FISCAL YEARS 1985–2012

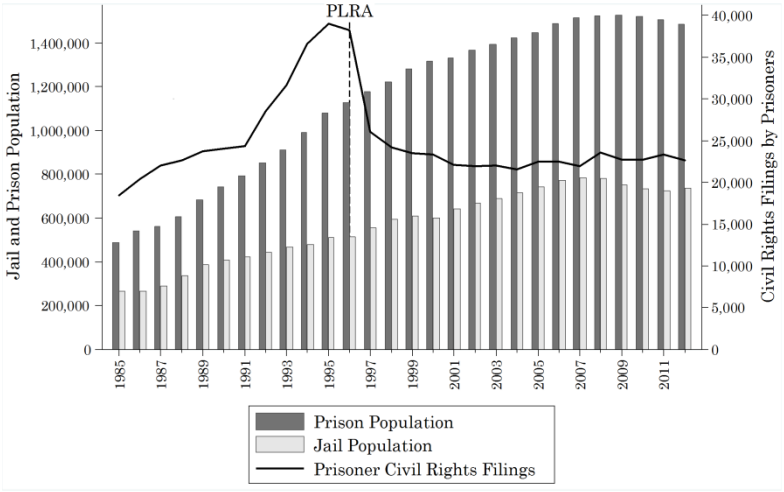
Fiscal Year of Filing	Incarcerated Population (Jail & Prison)	Cases filed	Filings / 1000 Prisoners
1985	752,603	18,485	24.6
1986	806,063	20,360	25.3
1987	853,114	22,067	25.9
1988	942,827	22,642	24.0
1989	1,070,227	23,737	22.2
1990	1,151,457	24,051	20.9
1991	1,215,144	24,352	20.0
1992	1,292,465	28,544	22.1
1993	1,375,536	31,693	23.0
1994	1,469,904	36,595	24.9
1995	1,588,370	39,053	24.6
1996	1,643,196	38,262	23.3
1997	1,733,150	26,095	15.1
1998	1,816,528	24,212	13.3
1999	1,889,538	23,512	12.4
2000	1,915,701	23,357	12.2
2001	1,969,747	22,131	11.2
2002	2,035,529	21,988	10.8
2003	2,082,145	22,061	10.6
2004	2,137,476	21,553	10.1
2005	2,189,696	22,484	10.3
2006	2,260,714	22,469	9.9
2007	2,295,982	21,978	9.6
2008	2,302,657	23,555	10.2
2009	2,274,099	22,698	10.0
2010	2,255,188	22,736	10.1
2011	2,227,723	23,362	10.5
2012	2,221,283	22,662	10.2

Margo Schlanger, *Trends in Prisoner Litigation,* at 5.[4]

[4] Case filing figures are derived from the Federal Judicial Center's annual data tabulating lawsuits terminated in federal

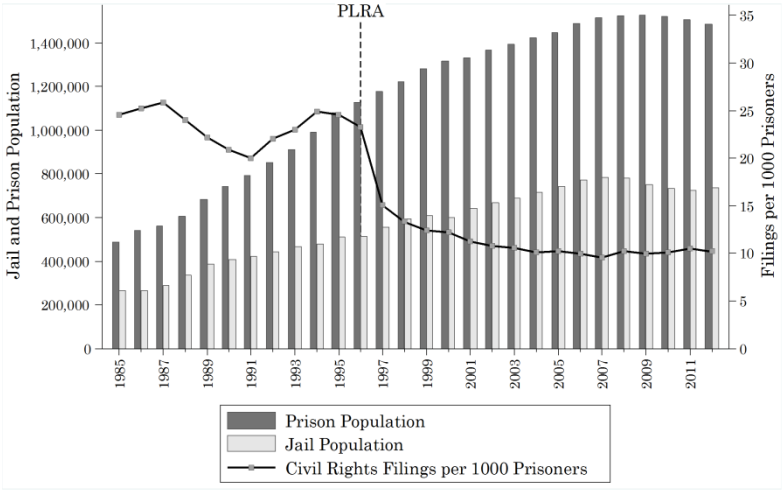
Or to illustrate the same trend graphically,

PRISONER POPULATION AND CIVIL RIGHTS FILINGS



district court, coded by nature of suit. Jail and prison populations are derived from publications of the Department of Justice's Bureau of Justice Statistics. *See Trends in Prisoner Litigation*, Technical Appendices.

The decline in prisoner litigation is even more precipitous on a per-capita basis:



Prisoner litigation has decreased nearly 60 percent per capita from the immediate pre-PLRA rate in 1995. Accordingly, the perceived need for docket control that prompted the PLRA's passage in 1996 is far less urgent now than it was two decades ago. Moreover, the three strikes rule is not the sole or even primary reason for the decrease in prisoner lawsuits.

3. Other Provisions of the PLRA Besides the Three Strikes Rule Restrain Prisoner Litigation.

Requiring appellate finality before a dismissed lawsuit or appeal counts as a PLRA "strike" will not

open the floodgates to meritless claims. Other provisions of the PLRA ensure that federal courts have a well-stocked toolkit to control the prisoner docket and speedily dispose of prisoner cases. Indeed, even without the three strikes rule, the PLRA imposes daunting obstacles for a prisoner seeking relief in federal court.

A. Merits Screening by the Courts

One significant docket control tool the PLRA gives district courts—one that differentiates between meritorious and frivolous claims—is merits pre-screening. Once the prisoner submits his complaint to the district court, the court pre-screens it, often with the aid of specialized *pro se* law clerks, and dismisses it prior to serving the defendant if the complaint is frivolous or malicious, fails to state a claim, or seeks money damages from an immune defendant.[5] 28 U.S.C. § 1915A. Although the Federal Judicial Center dataset does not allow a tally of the number of complaints dismissed through pre-screening, it does include data about the time from filing to disposition of cases.

A large percentage of prisoner claims are resolved rapidly—more rapidly than other civil rights claims. From 2009 to 2011, fully 25 percent of

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[5] This review occurs at the outset of litigation. Thus screening will generally occur before defendants receive notice of the action and therefore before there is any motion to revoke IFP status under § 1915(g) in the event it is erroneously granted to a litigant with three strikes.

prisoner civil rights cases were disposed of in 40 days or fewer, and half were disposed of in 135 days or fewer. In contrast, cases coded as non-prisoner civil rights claims—which include, for example, civil rights lawsuits against police—took more than twice as long to resolve—100 days to dispose of the first 25 percent, and 270 days to dispose of the first half. Margo Schlanger, *Trends in Prisoner Litigation,* at 14.

That district courts close fully half of prisoner civil rights lawsuits in five months or less, and far more rapidly than other similar cases, suggests that courts have the tools they need to weed out frivolous complaints—and that there is no docket-control imperative to erect further barriers to adjudicating prisoner cases on the merits.

B. Administrative Remedies

Before filing suit, prisoners must exhaust any administrative remedies. 42 U.S.C. § 1997e(a). This is a major hurdle. In some cases, of course, prison administrators use the grievance process to efficiently correct their own errors before litigation arises. *Woodford v. Ngo*, 548 U.S. 81, 94 (2006). At the same time, every incentive for the prisons is to create onerous grievance rules, making it "less likely a prison or jail, or staff members, will have to pay damages or be subjected to an injunction in a subsequent lawsuit." Margo Schlanger and Giovanna Shay, *Preserving the Rule of Law in America's Prisons*: *The Case for Amending the Prison Litigation Reform Act,* 11 U. Pa. J. Const. L. 139, 149 (2008).

States design administrative grievance procedures, interpret them in the first instance, and reap subsequent litigation benefits from making those grievance procedures steep. Schlanger and Shay, *Preserving the Rule of Law in America's Prisons,* 11 U. Pa. J. Const. L. at 146–50. Some states impose grievance deadlines as short as two days after the alleged violation, and deadlines under two weeks are common. *Woodford*, 548 U.S. at 118 (Stevens, J., dissenting). Perversely, such short deadlines impose the most onerous burdens on prisoners with the strongest claims for damages: those who were severely injured at the hands of a guard or another inmate, who could very well find a claim procedurally defaulted while incapacitated. *See, e.g., Steele v. N.Y. State Dept. of Corr. Servs.*, 2000 WL 777931 (S.D.N.Y. June 19, 2000) (prisoner's claim defaulted while he was hospitalized outside prison during the entire grievance period).

The law also encourages states to require strict compliance with grievance procedures. If the state entertains a grievance on the merits despite technical noncompliance, courts may find a waiver of the failure-to-exhaust defense. *See, e.g., Riccardo v. Rausch*, 375 F.3d 521, 524 (7th Cir. 2004); *Hill v. Curcione,* 657 F.3d 116, 125 (2d Cir. 2011) (citing *Riccardo* and other cases). The exhaustion requirement encourages prisons to devise ever-higher procedural hurdles, and to enforce them strictly, to protect themselves against subsequent litigation.

Even when fairly applied, the administrative exhaustion requirement imposes a formidable

barrier to many prisoners bringing a lawsuit at all. And state officials have the motive and opportunity to create stringent rules and apply them strictly.

C. Limitations on Attorney's Fees

If the prisoner obtains no administrative relief, he is unlikely to find an attorney to help with his case. The PLRA limits fee-shifting under 42 U.S.C. § 1988 in several ways, including by capping the hourly rate for attorneys seeking fees and separately capping the total fee award at 150 percent of any money judgment. 42 U.S.C. § 1997e(d)–(e). These limits discourage qualified attorneys from taking prisoner cases, especially meritorious but low-damage cases.

Further, even the roughly 11 percent of prisoners who ultimately succeed on their claims typically receive small judgments, further deterring attorney involvement. Schlanger, *Trends in Prisoner Litigation* p. 13–16. In district court cases in 2012, when a prisoner-plaintiff won damages at trial, the mean award was under $22,000 and the median award was just $1,525. *Id.* For cases where the prisoner prevailed without a trial, the mean award was under $19,000 and the median award was $7,000. *Id.* With limited fee-shifting and low damages awards, few prisoner cases attract attorneys.

The nature of prisoner litigation also discourages contingent-fee work in general. The contingent-fee business model relies on many cases settling quickly. Schlanger, *Inmate Litigation*, 116

Harv. L. Rev. at 1656. Yet settlement rates in prisoner litigation are unusually low because corrections officials typically do not want to capitulate to prisoners, both on principle and because it will encourage more litigation. Schlanger, *Inmate Litigation*, 116 Harv. L Rev. at 1613–22. And when prisoner cases do settle, they typically settle deeper into litigation than other types of cases. Schlanger, *Trends in Prisoner Litigation* at 10–11. In sum, the economics seldom add up for lawyers to take these cases, except for the occasional pro bono representation. So most prisoner-plaintiffs—95 percent—are compelled to file suit *pro se*, *id*. at 14, while others do not file suit at all.

D. Cost of Filing Suit (Even Before Three Strikes)

Under the PLRA, all prisoners must pay the full filing fee for a civil case regardless of indigency so long as they have any assets. Prisoners with fewer than three strikes are permitted to make down payments on the fee based on their commissary account balance and monthly income. Later, prison officials debit the prisoner's account monthly until the filing fee is paid in full, based on a statutory formula. 28 U.S.C. § 1915(b)(1)–(4).

The filing fee is no small deterrent. The current filing fee for a civil case in federal court is $400; for an appeal, $505.[6] Those sums represent

[6] 28 U.S.C. §§ 1913-14; http://www.uscourts.gov/FormsAndFees/Fees/DistrictCourtMiscellaneousFeeSchedule.aspx and

months, if not years, of prison wages. Prison wages are typically far below federal minimum wage. For instance, Federal Prison Industries Inc. pays between 23 cents and $1.15 per hour; the California Prison Industry Authority pays inmates 30 to 95 cents per hour, before deductions; Tennessee state prisoners top out at 59 cents per hour; in New York City, inmates earn up to $1.00 per hour.[7] A filing fee that takes months or years to pay off is a tremendous barrier to indigent prisoners' practical access to the courts.

In sum, the three strikes rule is not the linchpin of the PLRA's scheme to restrain prisoner litigation. That rule is instead among a long line of obstacles, both legal and practical, that a prisoner must surmount before having a lawsuit heard on the merits. There is no imperative to read the PLRA's three-strikes provision as broadly as humanly possible.

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http://www.uscourts.gov/FormsAndFees/Fees/CourtOfAppealsMiscellaneousFeeSchedule.aspx (setting forth the schedule of fees authorized by § 1913).

[7] S*ee* http://www.bop.gov/inmates/custody_and_care/unicor.jsp (last visited December 4, 2014); http://www.calpia.ca.gov/About_PIA/FastFacts.html (last visited December 4, 2014); Administrative Policies and Procedures, State of Tennessee Dept. of Correction, Index #504.04 (Oct. 13, 2013); City of New York Department of Correction Directive 4014R-A (April 11, 2007) (available at http://www.nyc.gov/html/doc/downloads/pdf/4014R-A_c.pdf) (last visited December 4, 2014).

4. Prisoner Litigation Did Not Increase after Circuits Adopted Petitioner's View of the Three-Strikes Rule.

Historical data from the Federal Judicial Center permits a comparison of prisoner litigation rates before and after various Courts of Appeals ruled on the issue presented. In circuits that adopted a rule requiring appellate finality before counting a dismissal as a PLRA strike, district courts did not experience higher or faster-increasing rates of prisoner litigation after adopting that rule than beforehand.[8]

The prisoner litigation rate did not increase in the Fifth Circuit after it became the first circuit to adopt the majority rule in *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996); instead, the rate plummeted, due to the overall effects of the PLRA as described above. Specifically, prisoner litigation in the Fifth Circuit declined from 27 lawsuits per 1,000 prisoners in 1996, to 20 such suits in 1997, to 15 suits in 1998, and to under 10 by 2005. The Fifth Circuit litigation rate has remained steady at 8 to 9 lawsuits per 1,000 prisoners ever since.

Nor did prisoner litigation increase in the Tenth Circuit in 1999, the First Circuit in 2000, or the Eighth Circuit in 2006 when those courts announced they were following *Adepegba*. By the time the Tenth Circuit adopted the majority view in

[8] Charts of prisoner litigation rates by circuit are attached as Appendix A.

Jennings v. Natrona Cnty. Detention Ctr. Med. Facility, 175 F.3d 775 (10th Cir. 1999), prisoner litigation rates in the Tenth Circuit had already declined from about 25 lawsuits per 1,000 prisoners in 1995 to about 11 such suits in 1999. After 1999, they declined still further, and have remained at under 10 lawsuits per 1,000 prisoners since 2002.

Similarly, by the time the First Circuit adopted the majority rule in *Michaud v. City of Rochester,* 2000 WL 1886289 (1st Cir Dec. 27, 2000) (unpublished opinion), prisoner litigation in the First Circuit had declined from about 12 lawsuits per 1,000 prisoners in 1995 to just over 6 lawsuits in 2000. And since that time, litigation rates in the First Circuit have remained stable at between 5 and 7 lawsuits per 1,000 prisoners.

The Eighth Circuit's experience was similar: when that court adopted the majority rule in 2006, *Campbell v. Davenport Police Dept.*, 471 F.3d 952 (8th Cir. 2006), prisoner litigation had already declined from over 57 lawsuits per 1,000 prisoners in 1995 to about 12 such suits in 2006. And prisoner litigation in the Eighth Circuit remained stable at 12 to 14 lawsuits per 1,000 prisoners from 2006 to 2011.[9]

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[9] There is one outlier: prisoner litigation rates did increase slightly the year after the D.C. Circuit adopted the majority rule in *Thompson v. DEA*, 492 F.3d 428 (D.C. Cir. 2007), from 77 to 85 lawsuits per 1,000 prisoners, then declined to 35 lawsuits per 1000 prisoners by 2011. But the D.C. District's litigation rate is more variable from year to year than the regional circuits, unsurprisingly given its small prisoner

Meanwhile, the Seventh Circuit, which adopted the anti-prisoner minority rule earliest in *Robinson v. Powell*, 297 F.3d 540, 541 (7th Cir. 2002), did not experience a significant change in its litigation rate when it adopted that rule in 2002. Rather, the Seventh Circuit consistently saw about 9 to 10 lawsuits filed per 1,000 prisoners from 2000 to 2008, before seeing a modest increase to 12 to 13 lawsuits in 2009 to 2011.

These figures do not purport to show, and we make no claims about, causation. Other factors are also in play here. The point is, the circuits in the majority adopted Petitioner's interpretation of § 1915(g) over a decade-plus period, and yet with the exception of the outlier D.C., all saw their prisoner litigation rates either decline or remain essentially flat in the years after doing so.

In other words, there is no reason to believe a ruling either way will materially alter the volume of prisoner litigation. Reversing the Sixth Circuit will not open the floodgates. Indeed, Michigan argued at the certiorari stage that the issue presented here arises infrequently. Br. in Opp. to Pet. at 5–8. The State has already conceded there is no floodgates problem. Defending a handful of additional prisoner cases on the merits will not drain Michigan's resources, nor will adjudicating them overburden the courts.

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population and high proportion of plaintiffs from other states suing federal officials.

To summarize, the PLRA has achieved its docket-control aims. Having already reduced the prisoner litigation rate so dramatically, there is no need to interpret the PLRA to impose still more barriers to merits adjudication of prisoner lawsuits. Moreover, there is no reason to think adopting the majority view will significantly increase the rate of prisoner litigation. Petitioner's rule allows more lawsuits to be resolved on their merits, and that is a worthy end in itself. His interpretation of § 1915(g) is faithful to the balance Congress struck in the PLRA.

CONCLUSION

Amici respectfully ask this Court to reverse the judgment of the Sixth Circuit and remand the cases for further proceedings.

Respectfully submitted,

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DECEMBER 2014

APPENDIX

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APPENDIX

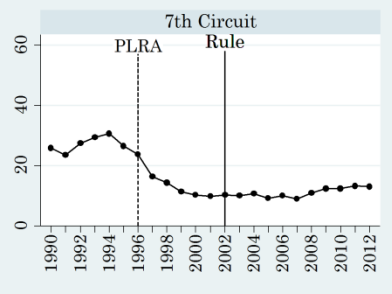
The figures below set out, by circuit, the prisoner civil rights district court filing rates from 1990 to 2012 (the most recent year for which full data is available). The figures are presented in three panels, to aid comparison: Panel 1 is just the 7th Circuit, the only circuit that adopted the minority rule before 2011 (and therefore long enough ago to examine post-adoption filing rates). Panel 2 includes the 1st, 2d, 5th, 8th, and 10th Circuits—all of which adopted the majority rule prior to 2011. (Because of its unusual variance, the D.C. Circuit's data is in a table following the figures.) Panel 3 includes the remaining circuits, which adopted their PLRA interpretations in 2011 or later, too late to evaluate post-adoption data.

SUMMARY BY CIRCUIT OF RULE STATUS AND RULE ADOPTION YEAR

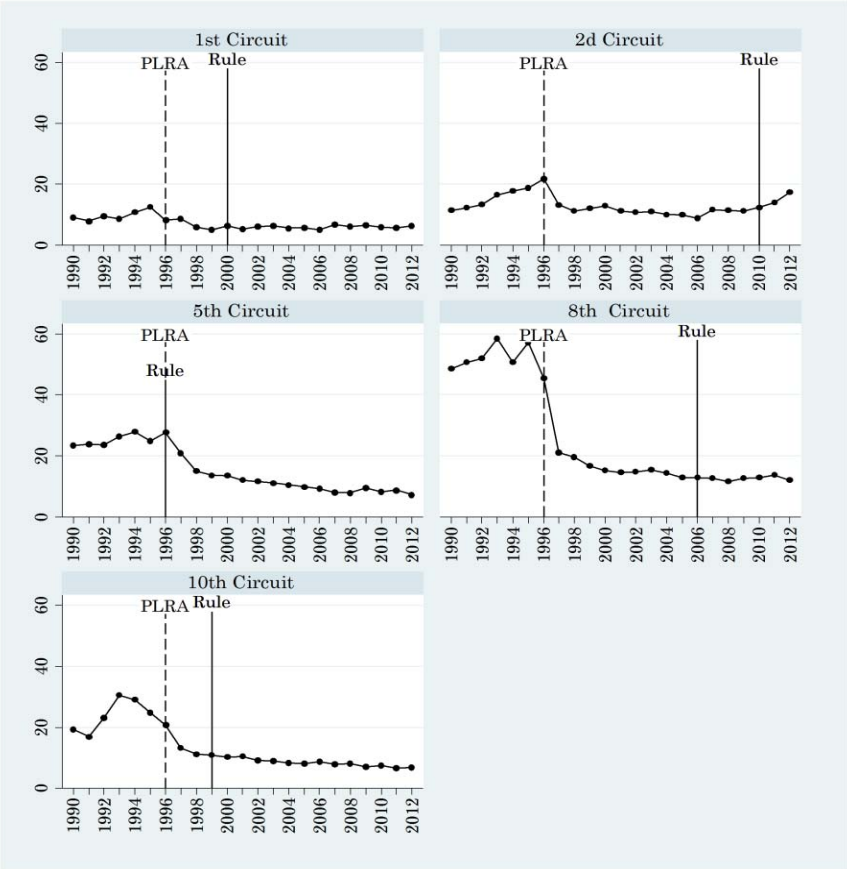
Panel	Circuit	Year Three-Strikes Rule Announced	Rule Adopted
1	7th	2002	minority
2	DC	2007	majority
	1st	2000	majority
	2d	2010	majority*
	5th	1996	majority
	8th	2006	majority
	10th	1999	majority
3	3d	2013	majority
	4th	2012	majority*
	6th	2013	minority
	9th	2011	majority
	11th	2012	majority*

* Rule is implied rather than squarely stated.

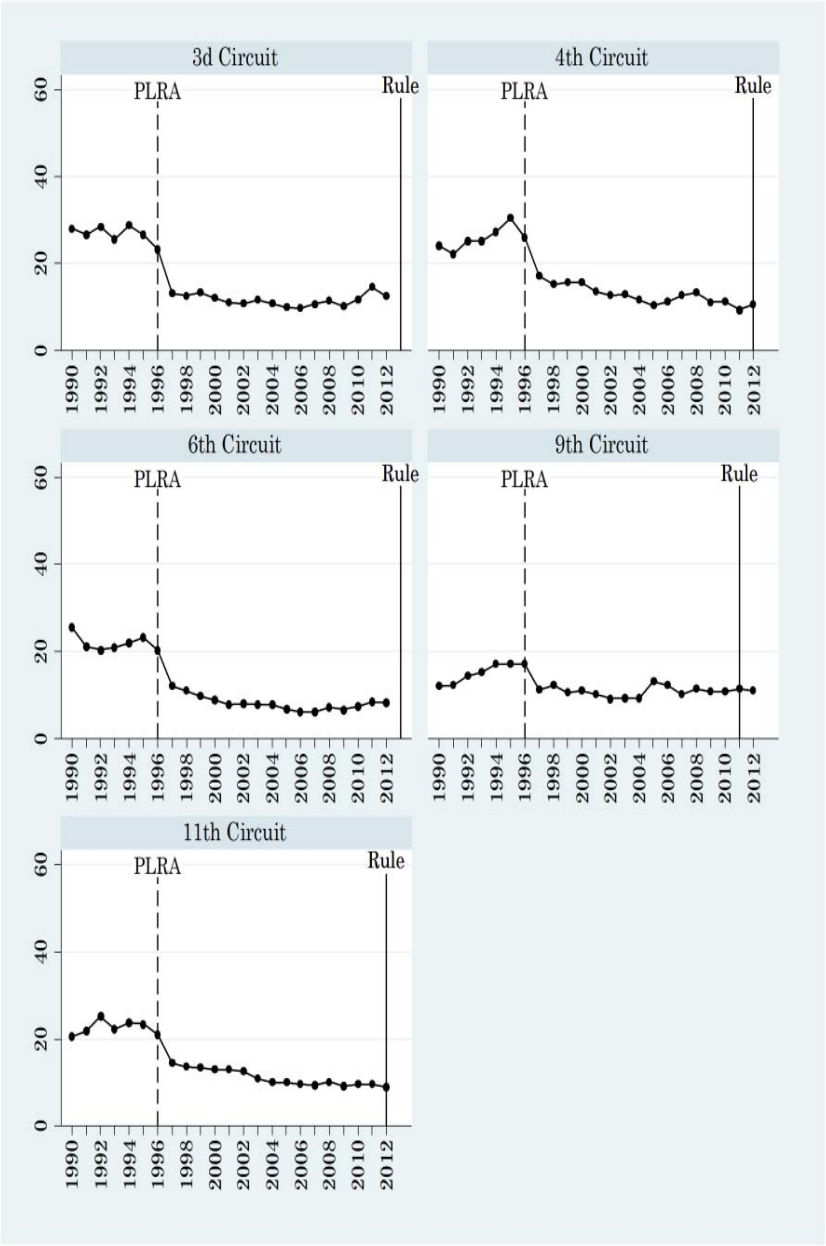
PANEL 1: MINORITY RULE ANNOUNCED BEFORE 2011



PANEL 2: MAJORITY RULE ANNOUNCED BEFORE 2011



PANEL 3: RULE ANNOUNCED 2011-2013



PRISONER CIVIL RIGHTS DISTRICT COURT FILING RATES, FY 1990-2011, D.C. CIRCUIT

Filing Year	Filing Rate/ 1000 Prisoners
1990	15.2
1991	8.3
1992	12.9
1993	10.3
1994	30.9
1995	36.8
1996 (PLRA)	33.5
1997	37.6
1998	31.8
1999	36.7
2000	55.0
2001	203.3
2002	72.4
2003	126.1
2004	73.6
2005	134.6
2006	66.5
2007 (Rule Announced)	78.0
2008	85.0
2009	81.6
2010	56.0
2011	39.9
2012	62.3