No. 14-844

In the Supreme Court of the United States

ANTOINE BRUCE, PETITIONER

v.

CHARLES E. SAMUELS, JR., ET AL.

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

BRIEF FOR THE RESPONDENTS

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
IAN HEATH GERSHENGORN
Deputy Solicitor General
NICOLE A. SAHARSKY
Assistant to the Solicitor General
BARBARA L. HERWIG
BENJAMIN M. SHULTZ
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Under the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321-66, when an *in forma pauperis* prisoner files a civil lawsuit or an appeal in federal court and cannot pay the full filing fees, he generally must make an initial partial payment, 28 U.S.C. 1915(b)(1), and then must pay the rest of the filing fees by "mak[ing] monthly payments of 20 percent of the preceding month's income credited to [his] account" (so long as his account contains more than $10), 28 U.S.C. 1915(b)(2). The question presented is:

Whether, when an *in forma pauperis* prisoner has filed more than one federal lawsuit or appeal, his monthly payment is 20 percent of his monthly income regardless of how many cases he has filed or instead is 20 percent of his monthly income for each case that he has filed.

PARTIES TO THE PROCEEDING

In the court of appeals, petitioner Antoine Bruce was joined by Jeremy Pinson, Andrew Hobbs, Jeremy Brown, and John Leigh, who were co-petitioners on Bruce's mandamus petition (though only Bruce is a party in this Court). All of them were also purportedly joined in their mandamus petition by Joseph Stevens, Richard Blount, Terrance Young, Joe Ramirez, Mario Zuniga, Alexis Ayala, Maxmillian McGarvie, Richard Hugly, Bobby Cowley, Jesse Jensrud, Ronald Coleman, Brooks Terrell, Angel Fernandez-Rodriguez, Anthony Zaragoza, Edwin Guzman-Garcia, Matthew Eyre, Javier Gonzalez, Ramiro Pacheco, Ramiro Rosillo, James Chatman, Joel Murillo-Delgado, Shawn Cropp, Nathaniel Theris, Ugochukwu Ossai, Manuel Gonzalez, David Gates, Sireno Castro, Laron Marshall, Conghau To, Enrique Chavez-Hernandez, Gary Kornegay, Chavon Wiggins, Randy Atchley, Sean Fabian, Damarcus Law, Wayne Jenkins, Windzer Fleurissaint, and Donte Allen, but none of those individuals participated in the briefing in the court of appeals as they were all dismissed from the case because they had died, had failed to sufficiently prosecute the case, or had otherwise indicated that they did not wish to participate. Mikeal Glenn Stine separately filed a motion to join the mandamus petition, but that motion was denied.

The respondents in the court of appeals were Charles E. Samuels, Jr., the Director of the Federal Bureau of Prisons; Harley G. Lappin, formerly the Director of the Federal Bureau of Prisons; Joyce K. Conley, formerly the Assistant Director of the Federal Bureau of Prisons; Raymond E. Holt, formerly the Regional Director for the Southeast Region of the

Federal Bureau of Prisons; Delbert G. Sauers, formerly the D.S.C.C. Chief of the Federal Bureau of Prisons; Rufus Williams, formerly the Regional Correction Services Administrator of the Federal Bureau of Prisons; John T. Rathman, formerly the Warden of FCI Talladega; Lisa Austin, formerly the Chief Designator of the Federal Bureau of Prisons; and Lee H. Green, Hearings Administrator of the Federal Bureau of Prisons. All of these defendants (other than Samuels) were sued in both their official and personal capacities; Samuels was not a named defendant in the complaint and was automatically substituted for Lappin in his official capacity only.

In this Court, the following individuals are additional respondents in their official capacities only, who have been automatically substituted under Rule 35: Angela Dunbar, Assistant Director for the Correctional Programs Division of the Federal Bureau of Prisons; Helen J. Marberry, Regional Director for the Southeast Region of the Federal Bureau of Prisons; Jose Santana, D.S.C.C. Chief of the Federal Bureau of Prisons; Mark C. Foreman, Regional Correction Services Administrator of the Federal Bureau of Prisons; and Anita Sheehey, Chief Designator of the Federal Bureau of Prisons.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 761 F.3d 1.

JURISDICTION

The opinion (Pet. App. 1a-18a) and orders (Pet. App. 19a-22a) of the court of appeals were filed on August 5, 2014. A petition for rehearing was denied on October 22, 2014 (Pet. App. 23a-25a). The court of appeals issued additional orders implementing its opinion on October 22, 2014 (Pet. App. 24a-27a), and on November 21, 2014 (Pet. App. 28a-30a). The petition for a writ of certiorari was filed on January 16, 2015, and granted on June 15, 2015. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-5a.

STATEMENT

1. The general rule in federal court is that litigants must pay certain fees upon filing a civil action or an appeal. See 28 U.S.C. 1911, 1913, 1914, 1917, 1926; Fed. R. App. P. 3(e). However, under the *in forma pauperis* statute, a court may allow a litigant to proceed "without prepayment of fees or security therefor" if the litigant establishes that he is unable to pay the required fees. 28 U.S.C. 1915(a)(1). Before 1996, indigent prisoners could rely on that provision to file a federal-court lawsuit without paying any filing fees.

Concerned with the increasing volume of prisoner litigation in the federal courts, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-66. The PLRA reflects Congress's judgment that the federal courts need "fewer and better prisoner suits." *Jones* v. *Bock*, 549 U.S. 199, 203-204 (2007). To that end, Congress provided that a prisoner who has been granted *in forma pauperis* status cannot avoid payment of filing fees altogether. Pet. App. 5a. Instead, the prisoner is obligated to "pay the full amount of a filing fee" for each civil action or appeal. 28 U.S.C. 1915(b)(1).

To satisfy that requirement, the PLRA provides that the prisoner shall make an initial partial payment followed by regular monthly installment payments. The PLRA sets forth formulas to determine the amounts of those payments. The "initial partial filing fee" is 20 percent of the greater of the "average monthly deposits" into the prisoner's trust account or the "average monthly balance" in that account during

the past six months. 28 U.S.C. 1915(b)(1). The "monthly payment[]" is "20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. 1915(b)(2). The monthly payments must be forwarded "to the clerk of the court" by "[t]he agency having custody of the prisoner" each month "until the filing fees are paid." *Ibid.*

The prisoner need not make an initial partial payment at the start of a lawsuit or appeal if he has no funds available. See 28 U.S.C. 1915(b)(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."); see also 28 U.S.C. 1915(b)(1) (requiring collection of the initial payment only "when funds exist"). In addition, no monthly payments are required unless the prisoner has more than $10 in his trust account. 28 U.S.C. 1915(b)(2).

2. This case arises out of a lawsuit filed by federal prisoner Jeremy Pinson in the United States District Court for the District of Columbia. Pet. App. 2a-3a. Pinson is serving a 20-year sentence for threatening the President and other offenses, and he "has made frequent use of the federal courts during his time in prison," filing "more than 100 civil actions and appeals." *Id.* at 2a.

In this lawsuit, Pinson sued various Federal Bureau of Prisons (BOP) officials (respondents in this Court) to challenge his placement in a special management unit in his prison. Pet. App. 2a-3a.[1] The

[1] Respondents were named as defendants in their official and individual capacities, see J.A. 22-23, but no summonses were issued

district court concluded that venue was inappropriate and transferred the case to the Northern District of Alabama, where Pinson was incarcerated. *Id.* at 3a; see J.A. 29-30.

3. Pinson filed a motion for reconsideration of the transfer order, which the district court denied, J.A. 31-33, and then filed a notice of appeal, which the court of appeals construed as a petition for mandamus, Pet. App. 3a-4a; J.A. 34-36. Pinson applied for *in forma pauperis* status and asked the court of appeals to stay collection of filing fees on the ground that he is already paying 20 percent of his monthly income for filing fees owed in another case. Pet. App. 4a; see J.A. 37-59.

Petitioner is a federal inmate who is serving a 15-year sentence for armed kidnapping and assault with the intent to kill. See 2003 FEL 6805 Judgment at 1 (D.C. Super. Ct. Nov. 1, 2004). He is also a frequent litigant. Petitioner has filed numerous federal lawsuits while imprisoned, including several that were dismissed as frivolous or malicious or for failure to state a claim. See pp. 40-41 & n.14, *infra*.

Petitioner and numerous other federal prisoners sought to join Pinson's lawsuit as co-petitioners. Pet. App. 4a-5a; J.A. 60-62.[2] After expending significant effort to determine which of those individuals wished to participate in the case, the court of appeals added petitioner (and three other prisoners) to the lawsuit. Pet. App. 4a-5a; J.A. 72-75, 78-79.

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in the district court, and no respondent has been served. Respondents appear here only in their official capacity.

[2] Pinson contended that these individuals sought to join the case in the district court, Pet. App. 4a, but the court of appeals found "no evidence" of such a request, *id.* at 10a.

Petitioner sought *in forma pauperis* status and joined Pinson's motion to stay the collection of filing fees. Pet. App. 4a-5a; J.A. 80-106. Petitioner stated that he had previously incurred obligations for filing fees in other cases under the PLRA. J.A. 106. As a result, he (like Pinson) contended that he should not be required to make any monthly payments towards the filing fees in this case until his prior fee obligations were satisfied.

4. The court of appeals declined to stay collection of the filing fees and dismissed petitioner's claims for lack of standing. Pet. App. 1a-18a. The court first concluded that Pinson could not proceed *in forma pauperis* because he had accumulated three "strikes" in previous litigation. *Id.* at 5a-8a; see 28 U.S.C. 1915(g).

Turning to petitioner, the court of appeals granted him *in forma pauperis* status, which meant that he could pay his filing fees in installments rather than upfront. Pet. App. 8a. But the court rejected petitioner's argument about how his monthly payments should be calculated. The court observed that there are two possible approaches to calculating a prisoner's monthly payment under 28 U.S.C. 1915(b)(2): the per-prisoner approach, where a prisoner pays 20 percent of his monthly income regardless of how many cases he has filed, and the per-case approach, where a prisoner pays 20 percent of his monthly income for each case that he has filed. Pet. App. 12a-13a. The court concluded that the per-case approach best comports with the statute's text, structure, and purposes. *Id.* at 14a-17a.

The court explained that the statute's text and structure "indicate that its provisions apply *to each*

action or appeal filed by a prisoner." Pet. App. 14a. The first part of the statute, subsection (b)(1), uses the singular to refer to a prisoner's "threshold obligation to make an initial partial payment": if a prisoner brings "a civil action" or files "an appeal," the court must collect "an initial partial filing fee." *Ibid.* (quoting 28 U.S.C. 1915(b)(1)). This language, the court observed, "calls for assessment of the initial partial filing fee *each time* a prisoner brings a civil action or files an appeal." *Id.* at 14a-15a (citation and internal quotation marks omitted); see *id.* at 15a (noting that there is no dispute between the parties "that the initial partial filing fee accrues in each case, regardless of the number of suits initiated").

The court then explained that the "initial partial filing fee" set out in subsection (b)(1) is the "triggering condition" for subsection (b)(2), which requires the monthly payments. Pet. App. 15a (citation omitted). "Given that the initial fee required by subsection (b)(1) applies on a per-case basis," the court reasoned, "it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis." *Ibid.* The court noted that its conclusion is "fortifie[d]" by other parts of Section 1915, which also refer to a single case. *Id.* at 15a-16a.

The court concluded that the per-case approach best serves the PLRA's purpose of deterring frivolous prisoner lawsuits. Pet. App. 17a. The PLRA "was designed to deter prisoners from filing frivolous lawsuits, which waste judicial resources and compromise the quality of justice enjoyed by the law-abiding population," *ibid.* (quoting *In re Kissi*, 652 F.3d 39, 41 (D.C. Cir. 2011) (per curiam)), and if the statute were read to "[c]ap[] monthly withdrawals at twenty per-

cent of an inmate's income, regardless of the number of suits filed," there would be little "deterrent effect" after the prisoner files his first action. *Ibid.*

Finally, the court rejected petitioner's argument that the per-prisoner approach is necessary to avoid concerns about access to the courts. The court noted that the PLRA contains a safety valve that allows a prisoner with no assets to proceed without paying an initial filing fee. Pet. App. 16a (discussing 28 U.S.C. 1915(b)(4)). And, the court observed, the statute requires monthly payments only when the prisoner has more than $10 in his account. *Id.* at 16a-17a (discussing 28 U.S.C. 1915(b)(2)). As a result, "even if 100 percent of a prisoner's income were subject to recoupment for filing fees, the statute assures his ability to initiate an action" (so long as no other statutory bar, such as the three-strikes provision, applies). *Id.* at 17a.

5. The court of appeals then entered a series of orders setting out the amounts petitioner must pay for this case. Pet. App. 19a-30a.[3]

SUMMARY OF ARGUMENT

A prisoner proceeding *in forma pauperis* who files more than one action or appeal in federal court must

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[3] The court of appeals assumed that each of the five co-petitioners should pay a proportionate share of the filing fees. See Pet. App. 24a, 28a. Other circuits have required each prisoner in a multi-prisoner case to pay the full filing fees. See *Hagan* v. *Rogers*, 570 F.3d 146, 155-156 (3d Cir. 2009); *Boriboune* v. *Berge*, 391 F.3d 852, 855-856 (7th Cir. 2004); *Hubbard* v. *Haley*, 262 F.3d 1194, 1197-1198 & n.2 (11th Cir. 2001), cert. denied, 534 U.S. 1136 (2002); but see *Talley-Bey* v. *Knebl*, 168 F.3d 884, 887 (6th Cir. 1999). The government has not sought review of the proportionate-share issue from this Court.

make monthly payments for each of those actions or appeals under 28 U.S.C. 1915(b)(2).

A. Section 1915(b) sets out the rules for payment of filing fees by *in forma pauperis* prisoners. It provides that when such a prisoner "brings a civil action or files an appeal," he is "required to pay the full amount of a filing fee." 28 U.S.C. 1915(b)(1). That fee is paid through an installment plan: the prisoner pays "an initial partial filing fee" of 20 percent of his average monthly deposits or income (whichever is greater), followed by "monthly payments" of 20 percent of his preceding month's income. 28 U.S.C. 1915(b)(1) and (2).

The statute's text indicates that the monthly payments, like the initial partial payment, are to be assessed on a per-case basis. Section 1915(b) is written in the singular: for "*a* civil action" or "*an* appeal," an inmate must make "*an* initial partial" payment and regular "monthly payments," sent by the inmate's custodian to "*the* clerk of the court." 28 U.S.C. 1915(b)(1) and (2) (emphases added). Further, the parts of Section 1915(b) that refer to the initial payment and monthly payments are textually linked: "After payment of the initial partial filing fee," the prisoner is required to make "monthly payments" towards the full amount of filing fees. 28 U.S.C. 1915(b)(2). Because payment of the initial partial filing fee is the "triggering condition for the monthly installments," both the initial partial payment and the monthly payments should be assessed on a per-case basis. Pet. App. 15a (citation and internal quotation marks omitted).

Petitioner agrees (Br. 17) that initial partial payments should be assessed on a per-case basis, but he

contends that the language about monthly payments refers to all cases an inmate has filed, so that the inmate need only pay 20 percent of his income monthly no matter how many cases he has filed. That reading cannot be squared with the statute's text, which consistently refers to a single case or appeal. Indeed, petitioner's approach assumes that Congress shifted from the perspective of a single case to all of a prisoner's cases in the middle of a sentence (the first sentence in subsection (b)(2)), with no textual indication that such a shift was intended.

Petitioner argues (Br. 16-21) that the statute limits an inmate's monthly payments for all cases to 20 percent of his income when it states that the inmate's custodian shall send monthly payments to "the clerk of the court" each month until the "filing fees" are paid. 28 U.S.C. 1915(b)(2). In petitioner's view, the reference to "filing fees" (plural) signifies an intention to refer to all of a prisoner's cases. But multiple fees can (and typically do) apply in a federal lawsuit or appeal, and other provisions in Section 1915(b) reflect that Congress understood as much. There is no reason to assume that Congress intended to encompass all of an inmate's lawsuits and appeals when it wrote language referring to a single action or appeal.

B. The broader statutory context confirms that both initial partial payments and monthly payments should be made on a per-case basis. Section 1915 sets out rules and procedures for proceeding *in forma pauperis* in the federal courts. The statute is written from the perspective of a single action or appeal. It provides that the court may authorize "*the* commencement, prosecution or defense" of a "*suit*, *action* or *proceeding*" or "*appeal*" when a prisoner provides

"*an* affidavit" demonstrating his indigence and "*a* certified copy" of his prison account statement. 28 U.S.C. 1915(a) (emphases added). It then provides that a prisoner must pay the filing fees for "*a* civil action" or "*an* appeal" through an initial payment and monthly installment payments. 28 U.S.C. 1915(b)(1) and (2) (emphases added). The court may dismiss "*the* case at any time" if "*the* allegation of poverty is untrue" or "*the* action or appeal" is frivolous, malicious, fails to state a claim, or seeks relief from a defendant with immunity. 28 U.S.C. 1915(e)(2) (emphases added). The court may award costs at the conclusion of "*the* suit or action" and if costs are awarded against the prisoner, "the prisoner shall be required to pay *the* full amount of the costs ordered," using the same installment plan set out for filing fees. 28 U.S.C. 1915(f)(1) and (2)(A) (emphases added). And the prisoner may not bring "*a* civil action" or "*appeal* a judgment" if he has three strikes. 28 U.S.C. 1915(g) (emphases added). The fact that the statute is written from the perspective of a single action or appeal reinforces that the monthly-payment provision should be read that way as well.

This Court's recent decision in *Coleman* v. *Tollefson*, 135 S. Ct. 1759 (2015), supports that reading of the text. In deciding whether a decision that had been appealed counts as a strike for purposes of the three-strikes rule, the Court recognized that the statute refers to a single stage of litigation, not multiple stages of litigation. *Id.* at 1763. The Court noted that Section 1915(g) refers to an action by "a single court" and so the Court declined to group multiple courts into "a single entity." *Id.* at 1763-1764. Just as the Court refused to read Section 1915(g) to refer to

multiple stages in *Coleman*, it should refuse to read Section 1915(b) to refer to multiple cases here.

C. The per-case approach to Section 1915(b) best furthers the PLRA's purposes. Congress enacted the PLRA in response to an onslaught of frivolous prisoner litigation. Those frivolous lawsuits tied up the courts and imposed substantial costs on taxpayers. See 141 Cong. Rec. 26,548, 26,553 (1995) (statements of Sens. Dole and Hatch). The existing *in forma pauperis* statute was inadequate to prevent those lawsuits, because it imposed no economic disincentive to going to court.

The per-case approach furthers Congress's core purpose of deterring prisoner lawsuits by providing that economic disincentive. By requiring *in forma pauperis* prisoners to pay the full amount of their filing fees through an installment plan, the PLRA "force[s] prisoners to think twice about the case and not just file reflexively." 141 Cong. Rec. at 14,572 (statement of Sen. Kyl). Each time an inmate files a new action or appeal, he must make both an initial payment and ongoing monthly payments towards the filing fees (assuming he has funds available).

Petitioner's approach disserves the PLRA's purposes because it permits a prisoner to bring as many actions or appeals as he likes without paying any additional monthly amount. Petitioner says that under his approach, a prisoner eventually will pay for his second and subsequent lawsuits because he will start payments for a second or subsequent lawsuit after he has finished paying for the first one. But a prisoner may never pay off the filing fees for his first case (especially if he is released from prison while making the payments), and in the meantime, there would be little

deterrent to his filing more lawsuits. That deterrent remains sorely needed, because prisoner litigation continues to "represent[] a disproportionate share of federal filings." *Coleman*, 135 S. Ct. at 1762. Petitioner himself has filed or joined at least 17 federal lawsuits or appeals (in addition to this one) while a federal prisoner.

D. Considerations of administrative convenience do not favor petitioner's interpretation. When the statute is applied as written, each court where a prisoner files an action or appeal requires an initial partial payment and directs the custodian to forward monthly payments until the full filing fees are paid. Each time the prisoner files a new action or appeal, the relevant court undertakes this process. The custodian then pays the initial amount specified and makes monthly payments so long as there is more than $10 available in the prisoner's account.

Petitioner agrees that an inmate's custodian should make initial partial payments for each case filed but contends that the custodian should only make one monthly payment. That requires the custodian to decide which court to pay or requires courts to coordinate amongst themselves to sequence the payments. And the statute is silent about how that coordination should occur. Rather than invite disputes about priority of payments, the Court should read the statute as written and require a prisoner to make monthly payments for each action or appeal he has filed (so long as there is more than $10 available in his account).

E. The constitutional-avoidance canon has no application in this case. A prisoner has no general constitutional right to obtain a waiver of court fees; only in rare cases, such as those involving fundamental

rights, could a person plausibly assert such a constitutional claim. See *M.L.B.* v. *S.L.J.*, 519 U.S. 102, 114 (1996). And even if there were such a general right, the per-case approach would not infringe it, because the statute permits a prisoner to file a lawsuit even if he has no funds available. See 28 U.S.C. 1915(b)(4). Requiring prisoners to pay for their use of the courts when they have funds available does not raise a serious constitutional question. The judgment of the court of appeals should be affirmed.

ARGUMENT

MONTHLY PAYMENTS FOR *IN FORMA PAUPERIS* PRISONERS UNDER 28 U.S.C. 1915(b)(2) SHOULD BE CALCULATED ON A PER-CASE BASIS

The Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-66, requires prisoners to pay the costs of their federal-court litigation through an initial payment and monthly installment payments. The question in this case is whether an inmate who files multiple actions or appeals should have to make monthly payments for each of them. Petitioner contends that, no matter how many lawsuits a prisoner has filed, he need only pay 20 percent of the money in his prison account each month to cover his court fees. He is mistaken. The statute's text, context, history, and purposes all demonstrate that a prisoner who has filed more than one case should make a separate monthly payment for each case filed.

A. The Text Of Section 1915(b) Indicates That Both Initial And Monthly Payments Are Assessed On A Per-Case Basis

As in any other statutory interpretation case, this Court's inquiry begins "with the language of the stat-

ute itself." *Caraco Pharm. Labs., Ltd.* v. *Novo Nordisk A/S*, 132 S. Ct. 1670, 1680 (2012) (citation omitted). The words of the particular provision at issue "must be read in their context and with a view to their place in the overall statutory scheme." *Davis* v. *Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). Here, the PLRA's text and structure strongly support use of the per-case method for assessing both initial payments and ongoing monthly payments of filing fees.

1. Section 1915(b) sets out the rules for payment of filing fees by prisoners proceeding *in forma pauperis* in federal court. It provides that when "a prisoner brings a civil action or files an appeal in forma pauperis," he "shall be required to pay the full amount of a filing fee." 28 U.S.C. 1915(b)(1). By its terms, the obligation to pay the filing fees applies independently to each stage of a case—meaning that a prisoner must pay the full filing fees for filing a lawsuit and for any appeal. See also *Coleman* v. *Tollefson*, 135 S. Ct. 1759, 1763 (2015) (the statute "treats the trial and appellate stages of litigation as distinct").

The filing fees are to be collected through an installment plan—the prisoner makes an initial "partial payment" followed by regular "monthly payments." 28 U.S.C. 1915(b)(1) and (2). Subsection (b)(1) addresses the initial payment, and subsection (b)(2) addresses the monthly payments.

Subsection (b)(1) states that "[t]he court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law," "an initial partial filing fee." 28 U.S.C. 1915(b)(1). It then specifies how to calculate that initial amount: it is "20 percent of the greater of" the average monthly deposits

in the prisoner's account or the average monthly balance of the account over the preceding six months. *Ibid.*

Subsection (b)(2) explains what happens next. "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." 28 U.S.C. 1915(b)(2). The "agency having custody of the prisoner" forwards that amount "to the clerk of the court" each month, so long as "the amount in the [prisoner's] account exceeds $10." *Ibid.*

Subsections (b)(3) and (b)(4) explain what happens when a prisoner has substantial funds, or no funds at all. Subsection (b)(3) provides that payment toward the initial filing fee is limited to "the amount of fees permitted by statute." 28 U.S.C. 1915(b)(3); see pp. 23-24, *infra.* Subsection (b)(4) provides that, if a prisoner "has no assets and no means by which to pay the initial partial filing fee," he may still file an action or appeal. 28 U.S.C. 1915(b)(4).

2. The question in this case is how the monthly payment amount should be calculated when an inmate has filed more than one action or appeal. There are two possible approaches. Under the "per-prisoner" approach, the prisoner pays 20 percent of his prior month's income, no matter how many cases he has filed. Pet. App. 12a. Under the "per-case" approach, the prisoner pays 20 percent of his prior month's income for each action or appeal he has filed (subject to the statute's $10 threshold). *Id.* at 13a.

The statutory text dictates the per-case approach. Both subsection (b)(1) and subsection (b)(2) are written in the singular, referring to what happens in a

single lawsuit or appeal. The statute begins: "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) (emphases added). That amount consists of "*an initial partial filing fee*" plus "monthly payments" towards the remainder of the debt. 28 U.S.C. 1915(b)(1) and (2) (emphasis added). Congress's consistent use of the singular—"a civil action," "an appeal," "an initial partial filing fee"—shows that Congress was setting out the amounts to be paid for a single proceeding (*i.e.*, one lawsuit or appeal), not the amounts to be paid for multiple proceedings.

Further, these two parts of Section 1915 are linked. As the court of appeals explained, "the initial partial filing fee imposed in subsection (b)(1) acts as the 'triggering condition' for the monthly installments required by subsection (b)(2)." Pet. App. 15a (citation omitted). That is, subsection (b)(1) sets out the initial payment amount, then subsection (b)(2) provides: "*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." 28 U.S.C. 1915(b)(2) (emphasis added). Accordingly, when subsection (b)(2) refers to "monthly payments," it plainly is referring to the regular installment payments that are due to pay off the balance of the filing fees for a single action or appeal that were not covered by the initial payment prescribed in subsection (b)(1).

That conclusion is reinforced by the text explaining how the initial payment and monthly payments are made. The statute provides that "[t]he court" where the "civil action" or "appeal" has been filed should

"assess" and "collect" the initial partial filing fee. 28 U.S.C. 1915(b)(1). The statute then provides that the inmate's custodian should "forward" monthly 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." 28 U.S.C. 1915(b)(2). The same court that "assess[es]" and "collect[s]" the initial partial filing fee under subsection (b)(1) receives the monthly payments under subsection (b)(2). See *Atchison* v. *Collins*, 288 F.3d 177, 181 (5th Cir. 2002) (per curiam) ("these terms all refer to the same court"). And since the court assesses the initial partial filing fee on a per-case basis, it follows that the same court would collect the monthly follow-up payments on a per-case basis as well.

Section 1915(b) thus establishes a single payment schedule for each single proceeding. A prisoner who files a lawsuit or an appeal must make the 20 percent initial payment, followed by monthly payments of 20 percent of the funds coming into his trust account for that lawsuit or appeal until the filing fees are paid in full. If the prisoner files multiple lawsuits, he must make the 20 percent initial payment and separate 20 percent monthly payments for every lawsuit filed.

3. Petitioner concedes (Br. 17) that subsection (b)(1) requires a separate initial partial payment of filing fees for *each* lawsuit or appeal the prisoner files. But petitioner contends (Br. 16-19) that subsection (b)(2), which refers to the monthly payments, applies not to a single case, but to *all* cases a prisoner has filed. He is mistaken.

a. Petitioner's construction of the statute requires the reader to assume that Congress shifted from the perspective of a single proceeding to the perspective

of all proceedings in the middle of a sentence. That sentence reads: "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." 28 U.S.C. 1915(b)(2). All agree that the first part of the sentence—"After payment of the initial partial filing fee"—refers to a single proceeding. In petitioner's view, the second part of the sentence—"the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account"—refers to all actions or appeals the prisoner has filed.

Nothing in the statutory text supports such a reading. Both parts of the sentence refer to a single action or appeal. The first part of the sentence refers to a single case, which suggests that the second part of the sentence should as well. The two parts of the sentence are connected by a comma, which shows that once the initial condition has been met (the initial payment has been made), something else should occur in that same case (monthly payments are required to pay off the remainder of the filing fees). Reading both parts of the sentence to refer to a single action or appeal makes sense: the inmate's obligation normally does not end with the initial payment, and so Congress needed to provide a payment schedule so that the inmate could pay off the entire amount for that proceeding, as the statute requires. If Congress had intended to encompass all of a prisoner's proceedings in subsection (b)(2), it would have indicated as much.[4]

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[4] For example, Congress could have said that the custodian should "forward payments from the prisoner's account to the clerk of the court where the prisoner's first action or appeal was filed,

Congress's failure to do so confirms that subsection (b)(2) prescribes rules for each case individually.

b. Petitioner acknowledges (Br. 31) that subsections (b)(1) and (b)(2) "together establish the regime for the collection of a filing fee." But he contends (Br. 31-32) that the two provisions should not be read "in tandem" because their approaches differ. There are reasonable explanations for the differences, and none of them provides a reason to decouple the two provisions.

Petitioner notes (Br. 31-32) that the 20 percent amount for the initial partial payment is calculated using the greater of the inmate's average deposits or the average account balance while the 20 percent monthly amount is calculated based on deposits. That distinction is fully consistent with per-case interpretation of the text. It is natural to look at both income and cash on hand to determine a person's ability to make a one-time payment at a particular point in time, but to look to income to assess a person's ability to pay on an ongoing basis. And nothing about Congress's use of income as the basis for the 20 percent monthly payments breaks the textual link between subsections (b)(1) and (b)(2) or indicates an intention to have the 20 percent amount satisfy the obligations for all of an inmate's cases.

Petitioner also observes (Br. 32) that the $10 threshold applies to monthly payments but not to initial payments. But that difference exists whether monthly payments are calculated on a per-case or per-prisoner basis. Moreover, Congress reasonably chose to include the $10 threshold only for monthly pay-

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forbearing on other monthly payments until the fees for the first action or appeal have been paid."

ments, because other protections apply with respect to the initial payment, see 28 U.S.C. 1915(b)(1) and (4), and because even if the initial payment left the inmate with less than $10, that would be a one-time occurrence, rather than a recurring one.

Finally, petitioner asserts (Br. 32) that subsections (b)(1) and (b)(2) each have a different "collector." He is mistaken; both the initial payment and the monthly payments are paid by the inmate's custodian to the court where the inmate filed the action or appeal. For the initial payment, the court calculates the amount due and enters an order requiring payment, whereas for the subsequent monthly payments, the custodian calculates the amount and forwards the payment to the court (so the court need not enter a new order each month). Compare 28 U.S.C. 1915(b)(1) (court "assess[es] and collect[s]" the initial amount), with 28 U.S.C. 1915(b)(2) (custodian "forward[s] payments * * * to the clerk of the court"). But there is no difference in the payor (the custodian) or the payee (the court). See Pet. App. 21a-22a. And the language specifying how monthly payments should be made—that the custodian should remit payments to "*the* clerk of *the* court," 28 U.S.C. 1915(b)(2) (emphases added)—reinforces that monthly payments are amounts paid to a single court to satisfy a prisoner's debt for a single proceeding.

4. Petitioner's primary textual argument (Br. 16-21, 32) is that the word "fees" in the last sentence of subsection (b)(2) evidences Congress's intent to permit only one 20 percent monthly payment for all of an inmate's cases. That sentence reads: "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." 28 U.S.C. 1915(b)(2). In petitioner's view (Br. 17), the use of the singular "clerk of the court" with the plural "filing fees" "indicates that a single clerk's office is to receive monthly payments even when there are numerous 'filing fees' outstanding" from several different courts.

That is incorrect. Although the statute refers to "filing fees," it does not refer to multiple lawsuits, appeals, or proceedings. Instead, the consistent judicial unit throughout Section 1915(b) is a single "action" or "appeal." 28 U.S.C. 1915(b)(1). The use of "fees" (plural) is consistent with the statute's repeated references to a single proceeding, because multiple fees can be assessed in a single case. At least two different types of fees can (and usually do) apply in a single case or appeal. Any person filing a district court action must pay the statutory filing fee set out in 28 U.S.C. 1914(a) (currently $350), as well as such "additional fees * * * as are prescribed by the Judicial Conference of the United States," 28 U.S.C. 1914(b). For most types of district court actions, the additional administrative fee is $50. See U.S. Courts, *District Court Miscellaneous Fee Schedule* (Aug. 20, 2014), http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule. Similarly, a person filing a notice of appeal must pay a statutory fee of $5 to the district court, 28 U.S.C. 1917, in addition to any other fees set by the Judicial Conference, 28 U.S.C. 1913. The Judicial Conference has imposed a $500 docketing fee for appeals. U.S. Courts, *Court of Appeals Miscellaneous Fee Schedule* (Aug. 20, 2014) (*Court of Appeals Fees*), http://www.uscourts.gov/servicesforms/fees/court-appeals-miscellaneous-

fee-schedule.[5] Because the reference to "fees" in subsection (b)(2) refers to the multiple fees due in a single case, the reference to a single "clerk of the court" makes sense: all of the fees due for commencing a particular action or appeal are paid to the (single) clerk's office where the action or appeal was filed.

Congress understood when it drafted the PLRA that multiple "fees" could be owed in a single case. Section 1915(a)(1) allows a federal court to "authorize the commencement * * * of any suit * * * or appeal therein, without prepayment of *fees* or security therefor," if the prisoner submits an affidavit explaining that he "is unable to pay such *fees*." 28 U.S.C. 1915(a)(1) (emphases added). Similarly, Section 1915(a)(2) directs a prisoner to submit a trust fund account statement if he is "seeking to bring a civil action or appeal a [civil] judgment * * * without prepayment of *fees* or security therefor." 28 U.S.C. 1915(a)(2) (emphasis added). Congress used an identical reference to "fees" in Section 1915(b)(1) when discussing the initial partial filing fee: when a prisoner files "a civil action or files an appeal" (singular), "[t]he court" (singular) shall assess and collect an initial partial filing fee "as a partial payment of any court *fees* required by law." 28 U.S.C. 1915(b)(1) (emphasis added).

Petitioner places significance (Br. 21) on Congress's description of the initial payment amount as an "initial partial filing fee," which is singular. See 28 U.S.C. 1915(b)(1)-(2). But the singular is appropriate

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[5] Although the appellate docket fee is technically payable to the court of appeals, see *Court of Appeals Fees*, by rule the district court clerk "receives the appellate docket fee on behalf of the court of appeals" along with the notice of appeal. Fed. R. App. P. 3(e).

to describe a single payment made at the outset of a case—the "*initial* partial filing fee" is a single "partial payment" towards all of the required "court *fees*" due for the action or appeal. 28 U.S.C. 1915(b)(1) (emphases added).[6]

Subsection (b)(3) uses the singular "filing fee" for the same reason. It directs: "[i]n no event shall the filing fee collected exceed the amount of fees permitted by statute" for commencing a case or filing an appeal. In that context, "the filing fee collected" refers to the initial partial filing fee, not the sum of all fees due for a proceeding. That is because without subsection (b)(3), subsection (b)(1) could be read to require the initial partial filing fee to exceed the total amount otherwise due for commencing a case (if the 20 percent amount is greater than the total amount due). See 28 U.S.C. 1915(b)(1); see also 141 Cong. Rec. at 14,572 (statement of Sen. Kyl) (noting that the initial "partial filing fee * * * may not exceed the full statutory fee"). That limitation is not necessary for the monthly payments, because they need only be made "until the filing fees are paid." 28 U.S.C. 1915(b)(2). Thus, as in subsection (b)(1), the use of the singular "fee" reflects that the initial partial filing fee is a single payment at a point in time. And subsection (b)(3) confirms that Congress used "fees" to refer to the fees due for a particular action or appeal, not fees

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[6] Congress's use of the singular in the first sentence of subsection (b)(1)—the directive that a prisoner filing an action or appeal "shall be required to pay the full amount of a filing fee," 28 U.S.C. 1915(b)(1)—is consistent with that approach, because in that context, the reference to "a" filing fee means "any" filing fee that might apply. See, *e.g.*, *Webster's Third New International Dictionary* 1 (1993) ("a" can mean "any" or "each").

for all actions or appeals. That is because it refers to "*fees* permitted by statute for the commencement of *a* civil action or *an* appeal." 28 U.S.C. 1915(b)(3).

Particularly where the rest of the filing-fee provision (and indeed, all of Section 1915) is written from the vantage point of a single action or appeal, Congress's use of "fees" in the last sentence of subsection (b)(2) provides no reason to shift the statute's focus from a single action or appeal to multiple actions or appeals.

B. The Statutory Context Confirms That Section 1915(b) Payments Are To Be Assessed On A Per-Case Basis

The words of a statute should be read "in their context and with a view to their place in the overall statutory scheme." *Davis*, 489 U.S. at 809. Here, all of 28 U.S.C. 1915 is drafted from the perspective of a single action or appeal, not from the perspective of multiple actions or appeals. That consistent vantage point reinforces that Section 1915(b)'s payment provisions apply on a per-case basis.

1. Section 1915 begins with subsection (a), which addresses how a person makes a showing of indigency so he may proceed *in forma pauperis*. The statute provides that the person must submit an affidavit demonstrating his indigency, 28 U.S.C. 1915(a)(1), and (if he is a prisoner) a certified copy of his prison trust account statement, 28 U.S.C. 1915(a)(2). The statute further provides that an *in forma pauperis* litigant may not take an appeal if the trial court certifies that it is not taken in good faith. 28 U.S.C. 1915(a)(3).

Throughout subsection (a), Congress referred to a single proceeding, rather than multiple proceedings. It provided that a court may authorize "*the* commencement, prosecution or defense" of "any *suit*,

action or *proceeding*, civil or criminal, or *appeal*" without full payment of filing fees by "*a* person who submits *an* affidavit" listing the person's assets and attesting that he is unable to pay the filing fees. 28 U.S.C. 1915(a)(1) (emphases added); see *ibid.* (affidavit "shall state the nature of *the* action, defense or appeal" (emphasis added)). By its plain text, the statute requires an affidavit for each lawsuit or appeal. The same is true for the trust account statement: when a prisoner seeks to bring "*a* civil action or appeal *a* judgment" without paying the full filing fees, he must submit "*a* certified copy of the trust fund account statement." 28 U.S.C. 1915(a)(2) (emphases added). The provision concerning bad-faith appeals likewise refers to a single case: "[*a*]*n* appeal may not be taken" if the trial court finds a lack of good faith. 28 U.S.C. 1915(a)(3) (emphasis added).

In like manner, subsection (b) sets out the schedule for an *in forma pauperis* prisoner to pay filing fees for a single proceeding. If the court grants the prisoner *in forma pauperis* status for a particular case, then the same court sets out a payment schedule for the filing fees required for that case, including both the initial payment amount and a direction to the custodian to submit monthly payments until the fees are paid. See, *e.g.*, Pet. App. 21a-22a. Those provisions, like the provisions about the affidavit and trust account statement, all refer to a single proceeding. Subsections (b)(3) and (b)(4) reinforce this understanding: the former caps the initial payment made toward fees for "*a* civil action" or "*an* appeal," 28 U.S.C. 1915(b)(3) (emphases added), and the latter permits a prisoner to bring "*a* civil action" or "ap-

peal[] *a* civil or criminal judgment" even when he has no funds, 28 U.S.C. 1915(b)(4) (emphases added).

2. The text that follows the payment provisions likewise sets out rules for prisoner litigation on a per-case basis. In subsection (c), Congress permits "*the* court" to direct the government to pay for "*the* record" (for "*the* appellate court") or "*a* transcript of proceedings" (for "*the* district court" to review magistrate-judge proceedings). 28 U.S.C. 1915(c) (emphases added). Subsection (d) authorizes "[t]he officers of *the* court" to serve process in *in forma pauperis* cases as in any other case. 28 U.S.C. 1915(d) (emphasis added). Subsection (e) provides that "[*t*]*he* court" may ask "*an* attorney" to represent an indigent litigant. 28 U.S.C. 1915(e)(1) (emphases added). It also directs "*the* court [to] dismiss *the* case at any time if *the* court determines that * * * the allegation of poverty is untrue" or that "*the* action or appeal" is frivolous or malicious, fails to state a claim, or seeks relief from a defendant with immunity. 28 U.S.C. 1915(e)(2) (emphases added); see *Coleman*, 135 S. Ct. at 1763 (explaining that 28 U.S.C. 1915(e)(2) refers to an action taken by a single court); see also 28 U.S.C. 1915A(a) (pre-docketing screening requirement applies to "*a* civil action" (emphasis added)).

Subsection (f) permits the court to award "costs at the conclusion of *the* suit or action as in other proceedings"; requires a prisoner to pay "*the* full amount" of costs if "*the* judgment" includes an award of costs; and caps the costs at "*the* amount of the costs ordered by *the* court." 28 U.S.C. 1915(f)(1), (2)(A), and (C) (emphases added). And subsection (g) provides that a prisoner may not "bring *a* civil action or appeal *a judgment*" *in forma pauperis* if he has three strikes

(meaning three occasions where his action or appeal was dismissed as frivolous or malicious or because it failed to state a claim), unless he is in imminent danger of serious physical injury. 28 U.S.C. 1915(g).

Because the provisions surrounding subsection (b)(2) all proceed from the perspective of a single case, it would be "incongruous" to interpret subsection (b)(2) to set out an amount the prisoner must pay each month "for all of his cases *in toto*." Pet. App. 16a; see, *e.g.*, *Kucana* v. *Holder*, 558 U.S. 233, 246 (2010) (provision's "statutory placement" between two other provisions, each of which included a certain limitation, suggested that the provision at issue also should be read to have included that limitation). Subsection (b)(2) is no anomaly within Section 1915; the statute is replete with language confirming that it refers to an individual case, not all of a prisoner's cases combined.

3. This Court's recent decision in *Coleman* supports that approach. In *Coleman*, the Court considered whether the dismissal of a lawsuit that had been appealed counted as a third strike under Section 1915(g). 135 S. Ct. at 1763. The Court concluded that the third dismissal does count as a strike, because that is "what the statute literally says." *Ibid.* The Court noted that the statute defines a strike as an instance where "an action or appeal" in federal court "was dismissed," and this language "describes dismissal as an action taken by a single court, not as a sequence of events involving multiple courts." *Ibid.* (citation omitted). The prisoner had argued that when Congress spoke of "an action or appeal" that "was dismissed," Congress meant to include both the action *and* the appeal, so that dismissal of an action would not count as a strike until the appeal was complete. *Ibid.* The

Court rejected that argument because the statute's text refers to an action by "a single court," and it declined to group multiple courts into "a single entity." *Id.* at 1763-1764.

Section 1915(b) likewise is written from the perspective of a single action or appeal, and petitioner seeks to interpret the monthly-payment provision as referring to multiple actions and appeals. But as this Court recognized, when the statute is written in terms of a single court's actions, it should not be broadened to refer to multiple courts' actions. 135 S. Ct. at 1763-1764. As in *Coleman*, the statute "literally says" (*id.* at 1763) that the 20 percent "monthly payments" are intended to satisfy the filing fee amount for one proceeding—"a civil action" or "an appeal." 28 U.S.C. 1915(b)(1) and (2). And just as a prisoner can accumulate two strikes for two different actions or appeals, he should also have to pay cumulative fees for those two stages. See *Newlin* v. *Helman*, 123 F.3d 429, 436 (7th Cir. 1997), cert. denied, 522 U.S. 1054 (1998), overruled in part on other grounds by *Lee* v. *Clinton*, 209 F.3d 1025, 1026-1027 (7th Cir. 2000), and *Walker* v. *O'Brien*, 216 F.3d 626, 633-634 (7th Cir.), cert. denied, 531 U.S. 1029 (2000). Accordingly, although petitioner invokes *Coleman* to support his view, Br. 19-20, the Court's decision supports the per-case approach to payment of filing fees.

4. Petitioner makes a number of additional arguments why monthly payments should not use the per-case approach that pervades the rest of Section 1915. None has merit.

a. First, petitioner contends (Br. 22-25) that monthly payments should be due on a per-prisoner basis because Congress did not expressly address the

situation of an inmate who files five or more cases. But as petitioner acknowledges (Br. 24), Congress enacted the PLRA because it was concerned about the volume of prisoner filings, and "Congress contemplated that some prisoners would file numerous lawsuits." See also pp. 33-36, *infra*. Because Congress expected some prisoners would file more than one case, yet wrote the statute from the perspective of a single case, Congress should be understood as expecting the statute to be applied each time a prisoner filed a case.

Petitioner also notes (Br. 24-25) that Congress did not expressly address what to do when a prisoner files a sixth case after already owing five separate filing fees. Congress likely expected that situation to arise infrequently because most prisoners would accrue three strikes (and therefore be required to pay the full filing fees upfront) by the time they incurred the obligation for their sixth case. See *Newlin*, 123 F.3d at 436 (making this prediction in 1997, just after the PLRA was enacted). If the three-strikes provision has not provided as much of a deterrent as Congress hoped (Pet. Br. 25 n.5), then the answer is to ensure that the filing-fee provisions do provide that deterrent, rather than allowing prisoners to file as many lawsuits as they want and make only one monthly payment.

b. Petitioner similarly errs in arguing (Br. 25-26) that the statute's application to costs favors his approach. The statute provides that, if a judgment against a prisoner includes an award of costs, the prisoner "shall be required to pay the full amount of the costs ordered," 28 U.S.C. 1915(f)(2)(A), and the prisoner is required to pay costs "in the same manner

as is provided for filing fees," 28 U.S.C. 1915(f)(2)(B).[7] Petitioner surmises (Br. 25) that the per-case approach may leave "no room for the payment of costs" if a prisoner has filed five or more lawsuits.

The statute's requirement that inmates satisfy cost awards does not undercut the per-case approach. Congress provided for costs, like filing fees, on a per-case basis: costs may be awarded in "*the* judgment" at "*the* conclusion of *the* suit," in the "same manner" as filing fees. 28 U.S.C. 1915(f) (emphases added). That provision means what it says: if a prisoner who already owes a single filing fee or cost award incurs a subsequent filing fee or cost award, the inmate will owe another 20 percent of his income toward that amount. If the inmate incurs a third cost or fee award, then he will pay 20 percent of his income towards each of those obligations. And if the inmate happens to incur a sixth fee or cost award, then the sixth obligation may be deferred because the inmate is already paying all of his income towards his obligations.

Contrary to petitioner's suggestion (Br. 26), there is nothing odd about requiring monthly payments for costs (like fees) on a per-case basis. If a prisoner has filed many actions and appeals, he may be subject to multiple orders, requiring multiple monthly payments. But the fact that the prisoner is a frequent litigant is not a reason to apply the statute more leniently.

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[7] The statutory text says costs should be paid in the same manner as fees "under subsection (a)(2)," 28 U.S.C. 1915(f)(2)(B); that is a scrivener's error, because subsection (a)(2) does not address payments for filing fees. See, *e.g.*, *Johnson* v. *McNeil*, 217 F.3d 298, 300 (5th Cir. 2000) (per curiam).

The possibility that a costs award may be large (Pet. Br. 26) likewise poses no barrier to per-case application of the statute. Indeed, in the federal experience, costs awards in unsuccessful prisoner suits are rare, and large costs awards are even more so.[8] In any event, the statute does not direct that the *amount* paid for fees and costs be the same, but only that the payments be made "in the same manner," *i.e.*, on a monthly basis using 20 percent of the inmate's income (where available).

That Congress required *in forma pauperis* prisoners to satisfy any costs awards provides no reason to favor petitioner's approach to filing fees. That is especially true because petitioner's approach (which requires payment of initial filing fees on a per-case basis) also could result in multiple fees and costs orders that must be satisfied simultaneously.

c. Finally, petitioner is wrong to suggest (Br. 27-31) that the per-case method undermines the $10 threshold in 28 U.S.C. 1915(b)(2). In petitioner's view, the per-case approach to monthly payments could result in a prisoner being left with no funds, whereas

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[8] Costs are not awarded automatically; rather, the prevailing party must seek costs. See 28 U.S.C. 1920 (requiring prevailing party to file a "bill of costs"). Many prisoner lawsuits are dismissed early in the litigation, before substantial costs are incurred. See *ibid.* (costs that may be taxed include filing fees, fees for transcripts, fees for printing and witnesses, and fees for certain experts and interpreters). As a result, the federal government generally does not seek costs against *in forma pauperis* prisoners. There are cases in which state entities have sought costs against state prisoners in federal court, see, *e.g.*, *Johnson*, 217 F.3d at 299, but even then costs awarded can be quite small. See, *e.g.*, *id.* at 299-300 (awarding $24 in costs); *Talley-Bey* v. *Knebl*, 168 F.3d 884, 887 (6th Cir. 1999) (awarding $20.50 in costs).

his approach always leaves a prisoner with at least $6. He is mistaken on both counts.

As an initial matter, the government disagrees with petitioner's interpretation of the $10 threshold. The provision requires payment of filing fees and costs "each time the amount in the account exceeds $10 until the filing fees are paid." 28 U.S.C. 1915(b)(2). The BOP has interpreted that provision to mean that a prisoner must always have $10 remaining in his account. Accordingly, the BOP only makes payments from a prisoner's account if, after the 20 percent amount is removed, at least $10 would remain. Although the statute could be read to permit the custodian to begin making withdrawals when a prisoner's account balance exceeds $10 and potentially use all of the funds in the account (if a prisoner has five or more fees or costs obligations), the better reading is that Congress intended that the inmate always be left with at least $10 in his account. Several courts of appeals have proceeded on this assumption. See, *e.g.*, *Skinner* v. *Govorchin*, 463 F.3d 518, 523-524 (6th Cir. 2006) (stating that the prison may remit monthly payments "so long as $10 remains in the account each month").

Even if the statute were read to permit the prison to make a payment that would take the account balance under $10, it would not lead to multiple payments as petitioner suggests. The statute directs the prison to forward payments "to the clerk of the court *each time* the amount in the account exceeds $10 until the filing fees are paid." 28 U.S.C. 1915(b)(2) (emphasis added). Because the $10 threshold must be considered "each time" the prison must forward a monthly payment, even if the first payment is allowed despite the fact that it would take the balance below $10 (be-

cause the account balance was above $10 before the payment was applied), the second payment would not be allowed (because after the first payment has been taken out, less than $10 remains in the account).

Petitioner also is wrong to assert (Br. 29) that his approach would always leave a prisoner with at least $6 in his account. That is because, even under petitioner's approach, the prisoner must pay the initial partial filing fees, and those fees are not subject to a $10 threshold. And even if the per-case approach dipped into the $10 cushion to a materially greater extent than the per-prisoner method, that result is consistent with Congress's intention that prisoners make a financial contribution towards each sequential lawsuit. The PLRA's inclusion of the $10 threshold simply provides no reason to adopt petitioner's reading of Section 1915(b)(2).

C. The Per-Case Approach To Section 1915(b) Best Furthers The PLRA's Purposes

This Court has consistently interpreted the PLRA mindful of its purposes. See, *e.g.*, *Coleman*, 135 S. Ct. at 810; *Jones* v. *Bock*, 549 U.S. 199, 203-204 (2007). The per-case approach best serves Congress's purpose of deterring frivolous prisoner lawsuits by requiring an additional financial commitment for each action or appeal a prisoner files. Petitioner's approach would permit a prisoner to file as many lawsuits as he desires after his first suit without paying any additional monthly amount.

1. Since 1892, Congress has permitted indigent litigants to proceed *in forma pauperis* in federal court. See Act of July 20, 1892, ch. 209, 27 Stat. 252; see also *Coleman*, 135 S. Ct. at 1761. In the mid-1990s, Congress became concerned about the increasing volume

of prisoner litigation in the federal courts. Prisoner lawsuits "represented a disproportionate share of federal filings," *Coleman*, 135 S. Ct. at 1762, and many of them were "completely without merit," 141 Cong. Rec. at 26,553 (statement of Sen. Hatch). These frivolous lawsuits "tie up the courts, waste valuable legal resources, and affect the quality of justice enjoyed by law-abiding citizens." *Id.* at 26,548 (statement of Sen. Dole).

Congress responded to this concern by enacting the PLRA in 1996.[9] The core purpose of the PLRA was to "deter prisoners from filing frivolous lawsuits." Pet. App. 17a (citation omitted); see, *e.g.*, 141 Cong. Rec. at 27,042 (statement of Sen. Hatch) (PLRA was designed to stop "the endless flow of frivolous litigation"); *id.* at 26,548 (statement of Sen. Dole) (PLRA was a response to the "alarming explosion in the number of lawsuits filed by State and Federal prisoners"). To further that purpose, Congress "placed a series of controls on prisoner suits." *Skinner* v. *Switzer*, 562 U.S. 521, 535 (2011). Those controls include the requirement that prisoners exhaust administrative remedies, see 42 U.S.C. 1997(e) (PLRA § 803(d), 110 Stat. 1321-71); the requirement that courts conduct initial screenings of prisoner suits to filter out those that are frivolous, malicious, or lack merit, see 28 U.S.C. 1915A

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[9] The PLRA was enacted as an amendment to an appropriations bill, H.R. 3019 (introduced in the Senate as S. 1594), during the second session of the 104th Congress. During the first session of the 104th Congress, Senators Dole, Hatch, and Kyl introduced this same language as freestanding bills, S. 1495 (Dec. 21, 1995), S. 1279 (Sept. 27, 1995), and S. 866 (May 25, 1995), and as an amendment to another appropriations bill, H.R. 2076, see 141 Cong. Rec. at 26,987. Congress debated this language at several points during the 104th Congress, as noted in the text.

(PLRA § 805, 110 Stat. 1321-75); the revocation of *in forma pauperis* status for an inmate with three "strikes," see 28 U.S.C. 1915(g) (PLRA § 804(d), 110 Stat. 1321-74); and (as relevant here) the requirement that prisoners pay the full filing fees (and costs, if awarded by the court) for their actions and appeals, see 28 U.S.C. 1915(b) and (f) (PLRA § 804(a) and (c), 110 Stat. 1321-73, 1321-74). See generally *Crawford-El* v. *Britton*, 523 U.S. 574, 596-597 (1998) (summarizing the PLRA's reforms).

Congress also included provisions designed to ensure that the small number of inmates with meritorious claims could proceed. For example, Congress allowed an inmate to proceed with a lawsuit even if he lacks the necessary funds, see 28 U.S.C. 1915(b)(4), and it authorized an exception to the three-strikes rule if an inmate is in imminent danger of serious physical injury, see 28 U.S.C. 1915(g). But the overwhelming purpose of the PLRA was to deter litigation by prisoners in federal court.

The filing-fee provisions at issue are a centerpiece of the PLRA. Frivolous prisoner suits had proliferated because prisoners could litigate for free. "As indigents, prisoners are generally not required to pay the fees that normally accompany the filing of a lawsuit," and as a result, "there is no economic disincentive to going to court." 141 Cong. Rec. at 14,571 (statement of Sen. Dole). If prisoners "know that they will have to pay these costs" then "they will be less inclined to file a lawsuit in the first place." *Ibid.* Accordingly, Congress decided to "require prisoners who file lawsuits to pay the *full amount* of their court fees and other costs." *Ibid.* (emphasis added). Although several parts of the PLRA were designed to deter frivo-

lous prisoner lawsuits, only the filing-fee and costs provisions in Section 1915 provide the economic disincentive that Congress sought to impose.

2. The per-case interpretation of Section 1915(b) furthers Congress's core purpose by ensuring that there is an "economic downside to going to court." 141 Cong. Rec. at 14,571 (statement of Sen. Dole). Congress was aware that some inmates would bring multiple lawsuits. See, *e.g.*, *id.* at 14,573 (statement of Sen. Kyl) (noting the need to deter "multiple filings"); *ibid.* (reprinting Wall Street Journal article that cited examples of three prisoners who filed over 100 lawsuits each). By requiring those inmates who filed more lawsuits to pay more money, Congress ensured that prisoners (like any other litigant) would stop and ask, "Is the lawsuit worth the price?" *Id.* at 14,572 (statement of Sen. Kyl).[10]

The per-prisoner approach, by contrast, thwarts Congress's core purpose. Whether an inmate has filed one lawsuit or 100 lawsuits, he need only pay 20 percent of his monthly income towards filing fees. As a

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[10] Petitioner contends (Br. 22-24) that this deterrence does not occur because the statute provides insufficiently "clear warning" that a prisoner who files additional lawsuits must pay additional amounts. He is wrong about the statute's text, see pp. 13-24, *supra*, and he was provided with specific notice that "an amount equal to 20% of each month's income" would be debited from his trust account for this case, J.A. 95-96. In any event, any ambiguity will be resolved by this Court's decision. See *Woodford* v. *Ngo*, 548 U.S. 81, 95 (2006) (although statutory-construction issue divided the circuits, Court concluded that its chosen approach would deter frivolous claims).

result, a prisoner has little economic disincentive to pursue as many lawsuits as he likes.[11]

Petitioner responds (Br. 38-39) that his approach does not permit a prisoner to avoid paying the filing fees for all of his cases, it simply delays the payments. But permitting a prisoner to delay making payments for any second or subsequent lawsuit limits the deterrent effect of the statute. The PLRA is designed to require a prisoner to "bear some marginal cost for each legal activity"; "[u]nless payment begins soon after the event that creates the liability, this will not happen." *Newlin*, 123 F.3d at 436; see *Christensen* v. *Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 Fed. Appx. 821, 829-830 (10th Cir. 2010) (unpublished) ("[T]he overarching purpose of the statute, to restrain runaway prison litigation with some pay-as-you-go constraint, would be diluted if not defeated by permitting prisoners with one ongoing case to postpone all successive filing fee obligations."). As petitioner notes (Br. 37), many prisoners earn low wages, and so it may take a long time for them to pay off the first filing fee. And a prisoner may avoid making his extended monthly payments entirely, because he may be released before he has finished paying for his first case, and many courts have held that an *in forma pauperis* prisoner need not continue to make monthly payments

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[11] Petitioner acknowledges (Br. 17) that a prisoner must make an initial partial payment for each action or appeal he files. As a result, there would be some cost to each new proceeding under his approach. But that is a one-time cost, and it may be quite minimal. See Pet. App. 21a (petitioner's initial partial filing fee was $0.64). By contrast, an ongoing monthly obligation that applies until all filing fees are paid is a significant economic deterrent to filing a frivolous suit.

once he has been released from prison.[12] Even if the payment obligation continued to apply after a prisoner was released, the inmate may still avoid payment because the PLRA does not provide a mechanism for collecting fees from prisoners who have been released. See 28 U.S.C. 1915(b)(2) (directing the prison "having custody of the prisoner" to collect the monthly payments from the prisoner's account). In practice, then, petitioner's approach would provide little economic disincentive to filing a second or successive prisoner lawsuit.

3. Petitioner contends (Br. 40-42) that monthly payments need not be assessed on a per-case basis because other portions of the PLRA sufficiently deter frivolous filings. He is wrong.

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[12] See, *e.g.*, *Brown* v. *Eppler*, 725 F.3d 1221, 1230-1231 & n.7 (10th Cir. 2013); *DeBlasio* v. *Gilmore*, 315 F.3d 396, 399 (4th Cir. 2003); *In re Smith*, 114 F.3d 1247, 1252 (D.C. Cir. 1997); *McGore* v. *Wrigglesworth*, 114 F.3d 601, 612-613 (6th Cir. 1997), abrogated on other grounds by *LaFountain* v. *Harry*, 716 F.3d 944, 951 (6th Cir. 2013); *Robbins* v. *Switzer*, 104 F.3d 895, 897-898 (7th Cir. 1997); *McGann* v. *Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2d Cir. 1996); see also *Gay* v. *Texas Dep't of Corr. State Jail Div.*, 117 F.3d 240, 241-242 (5th Cir. 1997) (stating that "a person who files a notice of appeal while in prison is subject to the filing-fee requirements of the PLRA despite subsequent release from prison," but also stating that it "join[ed] the Seventh Circuit," which permits a prisoner who has been released to forego additional payments if he qualifies for *in forma pauperis* status).

Petitioner contends (Br. 39 n.10) that, after a prisoner is released, he will still be liable for monthly payments that "came due but were not paid during incarceration." But that would provide little deterrent under petitioner's approach, because no monthly payments would be due for a second or subsequent case until the prisoner pays off the first obligation.

Although the PLRA has improved the situation in the federal courts, the problem of frivolous prisoner litigation remains acute. Prisoner litigation continues to "account for an outsized share of filings in federal district courts." *Jones*, 549 U.S. at 203 (citation and internal quotation marks omitted). In fiscal year 2014, state and federal prisoners filed over 32,000 prison conditions and civil rights cases in federal district court, which accounts for about 11 percent of all civil cases filed. See U.S. Courts, *Table C-3, U.S. District Courts—Civil Cases Commenced, by Nature of Suit and District, During the 12-Month Period Ending September 30, 2014*, at 1, http://www.uscourts.gov/uscourts/statistics/table/c-3/judicial-business/2014/09/30 (last visited Sept. 21, 2015); cf. *Jones*, 549 U.S. at 202 (in 2005, these lawsuits accounted for about 10 percent of civil cases). Although early statistics suggested that the PLRA was "having its intended effect," *Crawford-El*, 523 U.S. at 597, more recent data confirms that frivolous prisoner lawsuits remain a serious problem.[13]

The PLRA's requirement that prisoners pay full filing fees for every federal case remains an important deterrent. Other portions of the PLRA, such as the three-strikes provision, no doubt deter some frivolous

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[13] Prisoners have filed at least 25,000 civil rights and prison conditions lawsuits every year for the last five years. See U.S. Courts, *Table C-2A, U.S. District Courts—Civil Cases Commenced, by Nature of Suit, During the 12-Month Periods Ending September 30, 2009 Through 2014*, at 3 (*2014 Table C-2A*), http://www.uscourts.gov/statistics/table/c-2a/judicial-business/2014/09/30 (last visited Sept. 21, 2015). Compare *Crawford-El*, 523 U.S. at 597 n.18 (reporting 28,635 prisoner civil rights and prison conditions suits in fiscal year 1997), with *2014 Table C-2A*, at 3 (reporting 32,036 such suits in fiscal year 2014).

filings. But only the filing-fee and costs provisions in Section 1915(b) provide an *economic* deterrent to filing additional lawsuits. This Court has long recognized that "an economic incentive" provides a critical means of preventing "frivolous, malicious, or repetitive lawsuits." *Neitzke* v. *Williams*, 490 U.S. 319, 324 (1989). Congress made the same judgment in the filing-fee provisions of the PLRA.

This case illustrates the need for a financial deterrent. In addition to this case, petitioner has filed or joined at least 17 federal lawsuits or appeals that raise civil rights or prison conditions claims—including three new lawsuits he filed while this case has been pending before this Court.[14] He has not been deterred

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[14] See *In re Pinson*, No. 14-5139 (D.C. Cir. filed June 9, 2014); *Bruce* v. *BOP*, No. 13-1127 (10th Cir. filed Apr. 4, 2013); *Bruce* v. *Reese*, No. 10-14896 (11th Cir. filed Oct. 25, 2010); *Bruce* v. *BOP*, No. 15-cv-01780 (D. Colo. filed Aug. 17, 2015); *Bruce* v. *Cermak*, No. 15-cv-00540 (D. Colo. filed Mar. 16, 2015); *Bruce* v. *BOP*, No. 15-cv-00239 (D. Colo. filed Feb. 4, 2015); *Bruce* v. *Alvarez*, No. 14-cv-03232 (D. Colo. filed Nov. 26, 2014); *Bruce* v. *Osagie*, No. 14-cv-02068 (D. Colo. filed July 24, 2014); *Bruce* v. *Denney*, No. 14-cv-03026 (D. Kan. filed Feb. 10, 2014); *Bruce* v. *Coulter*, No. 14-cv-00210 (D. Colo. filed Jan. 24, 2014); *Bruce* v. *Dotson*, No. 13-cv-02597 (D. Colo. filed Sept. 20, 2013); *Hipps* v. *BOP*, No. 13-cv-00604 (D. Colo. filed Mar. 7, 2013); *Pinson* v. *Laird*, No. 13-cv-03033 (D. Kan. filed Feb. 28, 2013); *Bruce* v. *Wilson*, No. 13-cv-00491 (D. Colo. filed Feb. 25, 2013); *Bruce* v. *Holbrook*, No. 10-cv-03287 (N.D. Ala. filed Nov. 29, 2010); *Bruce* v. *Chambers*, No. 10-cv-02256 (M.D. Pa. filed Nov. 1, 2010); *Bruce* v. *Reese*, No. 09-cv-02378 (N.D. Ala. filed Nov. 24, 2009).

Petitioner also sought to join two other cases; joinder was denied in one case, see *Pinson* v. *Santana*, No. 13-cv-02098 (N.D. Tex. filed June 4, 2013; joinder denied Nov. 18, 2014), and the joinder motion remains pending in the other case, see *Cunningham* v. *BOP*, No. 12-cv-01570 (D. Colo. filed June 18, 2012).

by the fact that several courts have dismissed his claims as frivolous, malicious, or failing to state a claim. See Order at 5, *Bruce* v. *Coulter*, No. 14-cv-00210 (D. Colo. Apr. 23, 2014); Order at 1, *Bruce* v. *Denney*, No. 14-cv-03026 (D. Kan. Apr. 2, 2014); Report & Rec. at 7-12, *Bruce* v. *Wilson*, No. 13-cv-00491 (D. Colo. Oct. 7, 2013), adopted by Order at 1 (D. Colo. Nov. 4, 2013).[15] The filing-fee provisions should be interpreted to apply to each case a prisoner has filed in order to stem the tide of frivolous prisoner litigation.

4. Finally, petitioner contends (Br. 40) that requiring an inmate who has filed five or more cases to pay almost all of his income toward those obligations is too high a price. Petitioner's argument proceeds from the premise that it is normal and acceptable for prisoners to file five or more lawsuits in federal court. But that is precisely the situation the PLRA was designed to discourage.

Implementing the per-case method will not improperly deter prisoners from bringing meritorious lawsuits. Rather, a petitioner weighing whether or not to bring a second or successive suit will face the same economic deterrent he faced when deciding whether or not to bring the first suit. There is no reason to assume that Congress cared less about deterrence of an inmate's second, third, or tenth lawsuit.

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[15] Although petitioner did not have three strikes at the time he sought to join this action, see Resp. Cert. Br. 15 n.7, several courts have concluded that he does now. See *Bruce* v. *BOP*, No. 15-cv-00239, 2015 WL 4035649, at *1-*2 (D. Colo. June 30, 2015); *Bruce* v. *Osagie*, No. 14-cv-02068, 2015 WL 2443826, at *1-*2 (D. Colo. May 20, 2015); Order at 1-2, *Bruce* v. *Cermak*, No. 15-cv-00540 (D. Colo. May 18, 2015).

See Pet. App. 16a. To the contrary, Congress was particularly concerned about providing sufficient deterrence for repeat litigants. See 141 Cong. Rec. at 27,043 (statement of Sen. Reid) (discussing a prisoner who had "bragged that he filed hundreds" of lawsuits); 142 Cong. Rec. 8237 (1996) (statement of Sen. Abraham) ("Under current law, there is no cost to prisoners for filing an infinite number of such suits.").

The PLRA ensures that even a frequent litigant will be able to file a meritorious claim. Its safety-valve provision permits a prisoner to file a lawsuit even if he "has no assets and no means by which to pay the initial partial filing fee" (so long as he does not have three strikes). 28 U.S.C. 1915(b)(4); see 28 U.S.C. 1915(b)(1) (initial partial filing fee due "when funds exist"). Accordingly, the courthouse doors remain open to a prisoner who has a meritorious claim but lacks any ability to pay the filing fees.

Petitioner's complaint is not that the per-case method prevents a prisoner from filing a meritorious lawsuit, but rather that it makes the prisoner choose between filing the lawsuit or using his funds for other purposes. But that is what Congress intended. If given the choice between requiring prisoners who filed more lawsuits to pay more of their monthly income, or allowing a prisoner who filed more lawsuits to pay only 20 percent of his monthly income no matter how many cases he has filed, the Congress that enacted the PLRA surely would choose the former.

D. Considerations Of Administrative Convenience Do Not Favor Petitioner's Interpretation

The per-case approach provides a straightforward method for making monthly payments, while petition-

er's method raises questions about how to sequence payments and which court orders should take priority.

1. Application of Section 1915(b) on a per-case basis is straightforward. Each court where an inmate files an action or appeal enters an order setting out the initial payment amount and directing the custodian to make monthly payments. The custodian receives these orders and each month, it pays the 20 percent amount for each case, leaving at least $10 in the account. If there are no funds available, the custodian does not send a payment. This is the regime set out in the statute: for each "civil action" or "appeal," the "full amount" of filing fees must be paid in installments. 28 U.S.C. 1915(b)(1) and (2). The PLRA's direction that the prison make payments to "*the* clerk of *the* court," 28 U.S.C. 1915(b)(2) (emphases added), demonstrates that Congress expected that each court would collect a monthly payment without regard to any payments being made to other courts.

Application of Section 1915(b) under petitioner's approach is more complicated. Each court where the inmate has filed suit would enter an order requiring initial and monthly payments, forcing the custodian to decide which orders to satisfy and in what order. The alternative would be for courts to coordinate with each other and decide which court should receive the monthly payment. That becomes more difficult the more cases a prisoner has filed, especially because a prisoner may not disclose all of his prior cases to the court. See, *e.g.*, J.A. 106 (petitioner's joinder motion mentioned only two of his cases). And the likely outcome of petitioner's approach is that some courts will never get paid anything. See pp. 37-38, *supra*.

It is true, as petitioner notes (Br. 50-51) that the per-case approach may require prioritizing lawsuits after the fifth one. But those will be more rare than under petitioner's approach, where some type of sequencing is necessary for any lawsuit or appeal after the first one. Even if the per-case approach becomes complicated when a prisoner files his sixth action or appeal, that is because the prisoner has filed so many cases, not because the per-case approach is inherently flawed. It would turn the PLRA on its head to interpret the statute to reward litigious prisoners because of administrative difficulties they have created.

2. Petitioner contends (Br. 49-50) that his approach is "more sensible" because it avoids sending "five checks" to "five different" courts. But petitioner's approach *does* require multiple payments; he agrees that initial filing fees should be assessed on a per-case basis. And petitioner is wrong to suggest that, if given the choice between requiring a prison to pay for postage and allowing prisoners to file nearly costless second and subsequent lawsuits, Congress would choose to save the postage. That is especially true because Congress was aware of the enormous impact prisoner lawsuits have on the state and federal fisc. See 141 Cong. Rec. at 27,042 (statement of Sen. Dole) (estimating that States spent $81 million on prisoner lawsuits in 1995).

Petitioner also expresses concern (Br. 51-53) that requiring prisoners to make monthly payments for each case creates questions about priority with other inmate financial obligations. But prisons are already accustomed to dealing with these questions, because as petitioner notes (Br. 52), an inmate who owes filing fees may also owe restitution, child support payments,

tax liens, or other financial obligations.[16] Questions about how to prioritize PLRA obligations and other financial obligations arise under petitioner's approach just as they arise under the per-case approach.[17] And in any event, petitioner provides no evidence that the PLRA was designed to maximize accommodation with state withholding schemes. There is, however, evidence that the PLRA was designed to protect States' resources by enacting a strong deterrent to frivolous litigation. See 141 Cong. Rec. at 26,553 (statement of Sen. Kyl) (explaining that the PLRA was needed because federal prisoners were imposing substantial costs on taxpayers); *id.* at 26,448 (statement of Sen. Abraham) (explaining that the "torrent of prisoner lawsuits" unnecessarily "occupy an enormous amount of State and local time and resources"). And it is the per-case approach, not petitioner's approach, that best advances that interest.

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[16] See U.S. Dep't of Justice, BOP, *Program Statement 4500.11, Trust Fund/Deposit Fund Manual* 87 (Apr. 9, 2015), http://www.bop.gov/policy/progstat/4500_011.pdf (providing for payment of financial obligations that do not require inmate's consent); U.S. Dep't of Justice, BOP, *Program Statement 5380.08, Financial Responsibility Program, Inmate* 5-7 (Aug. 15, 2005), http://www.bop.gov/policy/progstat/5380_008.pdf (providing procedures for working with inmates to pay financial obligations).

[17] Petitioner suggests (Br. 53) that his approach would always leave 80 percent of funds in an inmate's account for other obligations. That is wrong, because petitioner would allow an additional 20 percent to be paid towards costs each month, and he would pay initial partial filing fees for all of an inmate's cases, potentially leaving nothing in the account.

E. The Canon Of Constitutional Avoidance Has No Role To Play In This Case

Contrary to petitioner's contention (Br. 42-48), the canon of constitutional avoidance does not justify adopting the petitioner's approach to calculating monthly payments under Section 1915(b)(2).

1. As an initial matter, it is not every prisoner who could plausibly assert a violation of a constitutional right of access to the courts. As this Court has explained, "a constitutional requirement to waive court fees in civil cases is the exception, not the general rule." *M.L.B.* v. *S.L.J.*, 519 U.S. 102, 114 (1996); see *United States* v. *Kras*, 409 U.S. 434, 450 (1973) (there is no "unlimited rule that an indigent at all times and in all cases has the right to relief without the payment of fees"). It is generally only in those rare cases where certain "fundamental" or similar interests are at stake, *M.L.B.*, 519 U.S. at 115, that a litigant can plausibly claim violation of a constitutional right of access to the courts. And since many of the recognized fundamental interests involve rights that would be normally asserted in criminal cases or in state court, rather than in a civil case in federal court,[18] it would be an unusual prisoner who could reasonably assert that he was bringing the kind of federal lawsuit that triggers constitutional concerns about court access.

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[18] See, *e.g.*, *M.L.B.*, 519 U.S. at 124 (State may not condition appellate rights on payment of court costs in case terminating parental rights); *Mayer* v. *City of Chi.*, 404 U.S. 189, 198 (1971) (State may not condition a criminal appeal on ability to pay for a transcript); *Boddie* v. *Connecticut*, 401 U.S. 371, 372-374 (1971) (State may not condition access to divorce proceedings on payment of court fees).

2. Even assuming a prisoner has a right to file lawsuits in federal courts without paying filing fees, the per-case interpretation of Section 1915(b) raises no serious constitutional question because it does not prevent a person from doing so. Section 1915(b)(4) provides that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment" because "the prisoner has no assets and no means by which to pay the initial partial filing fee." 28 U.S.C. 1915(b)(4); see 28 U.S.C. 1915(b)(1) (initial partial filing fee is due only "when funds exist"). This provision ensures that "prisoners with meritorious claims will not be shut out from court for lack of sufficient money to pay even the partial fee." 141 Cong. Rec. at 14,573 (statement of Sen. Kyl).

This safety valve has been effective in practice. The courts of appeals have recognized that Section 1915(b)(4) permits a prisoner to proceed with an action or appeal even though he lacks funds to pay the filing fees.[19] District courts routinely rely on the safety-valve provision to permit indigent prisoners to proceed without paying filing fees.[20] Petitioner himself has obtained the benefit of Section 1915(b)(4) in at least five of his cases. See Order at 1-2, *Bruce* v. *Alvarez*, No. 14-cv-03232 (D. Colo. Jan. 25, 2015); Order

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[19] See, *e.g.*, *Sultan* v. *Fenoglio*, 775 F.3d 888, 890-891 (7th Cir. 2015); *Menefee* v. *Werholtz*, 368 Fed. Appx. 879, 884 (10th Cir. 2010) (unpublished); *Wilson* v. *Sargent*, 313 F.3d 1315, 1320-1321 (11th Cir. 2002) (per curiam); *Taylor* v. *Delatoore*, 281 F.3d 844, 850-851 (9th Cir. 2002); *Hatchet* v. *Nettles*, 201 F.3d 651, 652-653 (5th Cir. 2000) (per curiam); *McGore*, 114 F.3d at 605-606; *Leonard* v. *Lacy*, 88 F.3d 181, 184 (2d Cir. 1996).

[20] A search of district court cases that mention 28 U.S.C. 1915(b)(4) in Westlaw and LexisNexis yields hundreds of results.

at 1-2, *Bruce* v. *Osagie*, No. 14-cv-02068 (D. Colo. Sept. 8, 2014); Order at 2, *Bruce* v. *Coulter*, No. 14-cv-00210 (D. Colo. Jan. 25, 2014); Order at 2, *Bruce* v. *Holbrook*, No. 10-cv-03287 (N.D. Ala. Feb. 25, 2011); Order at 1-2, *Bruce* v. *Reese*, No. 09-cv-02378 (N.D. Ala. Jan. 6, 2010).

3. Petitioner acknowledges (Br. 45) that a prisoner would never be prevented from filing a federal-court suit due to lack of funds, but he contends (Br. 45-46) that simply placing a cost on prisoners' ability to file such suits raises serious constitutional questions. He is mistaken. Prisoners are not required to choose between paying for lawsuits and the necessities of life, because prison systems are constitutionally bound to provide inmates with adequate food, clothing, shelter, and medical care. See *Farmer* v. *Brennan*, 511 U.S. 825, 832 (1994). Prisons likewise must provide "paper and pen to draft legal documents" and "stamps to mail them." *Bounds* v. *Smith*, 430 U.S. 817, 824-825 (1977).[21] Adopting the per-case approach under Section 1915(b)(2) therefore would not force a prisoner to

[21] In the federal system, BOP goes beyond those requirements. See, *e.g.*, U.S. Dep't of Justice, BOP, *Program Statement 5230.05*, *Grooming* 3 (Nov. 4, 1996), http://www.bop.gov/policy/progstat/5230_005.pdf (explaining that warden must "make available to an inmate those articles necessary for maintaining personal hygiene," including soap, articles for brushing teeth, a comb, toilet paper, female hygiene products, and materials for shaving); U.S. Dep't of Justice, BOP, *Program Statement 5265.14*, *Correspondence* § 540.21(d)-(f), at 19-20 (Apr. 5, 2011), http://www.bop.gov/policy/progstat/5265_014.pdf (explaining that BOP provides free postage to an inmate who "has neither funds nor sufficient postage," not only for legal mailings but also "to enable the inmate to maintain community ties" and "in verified emergency situations").

choose between paying for a lawsuit and satisfying his basic needs.

Contrary to petitioner's contention (Br. 45-46), this case is nothing like *United States* v. *Jackson*, 390 U.S. 570 (1968). In that case, exercise of the constitutional right to a jury trial risked subjecting the defendant to the death penalty. *Id.* at 581. Here, by contrast, a prisoner who files suit merely has to pay for his use of the federal courts, when he has funds available (and subject to a $10 threshold). The unusual facts of *Jackson* illustrate just how far afield that case is from the PLRA. The payment scheme in the PLRA is not excessive, and it reasonably furthers the legitimate purpose of weeding out frivolous lawsuits by ensuring that prisoners have a sufficient stake in the suits they file so that they carefully assess the merits of their claims before filing suit.

4. Although the PLRA's safety valve fully answers petitioner's constitutional concerns, the statute separately requires monthly payments only so long as the "amount in the [prisoner's trust] account exceeds $10." 28 U.S.C. 1915(b)(2). A prisoner therefore would always be allowed to keep a small portion of his monthly income for discretionary spending. Further, a prisoner with a meritorious claim may owe nothing at the end of the litigation. See Fed. R. Civ. P. 54(d)(1) (allowing an award of costs); see also 28 U.S.C. 1920(1) (explaining that "costs" includes filing fees). For that reason as well, petitioner is wrong to assert that the per-case approach prevents prisoners from pursuing meritorious claims.

Finally, even if a prisoner were unwilling to spend his funds on his federal-court litigation, he could seek relief through the administrative process and in state

courts. Although some States have enacted laws that require payment of filing fees in a manner similar to the PLRA, see Pet. Br. 52 n.16, in others the "limitations on filing [*in forma pauperis*] may not be as strict." *Abdul-Akbar* v. *McKelvie*, 239 F.3d 307, 314-315 (3d Cir.) (en banc), cert. denied, 533 U.S. 953 (2001); see *Lewis* v. *Sullivan*, 279 F.3d 526, 530 (7th Cir. 2002) (recognizing that prisoners who cannot file under the PLRA may have the option of pursuing their claims in state court). Further, prisoners are required to exhaust their administrative remedies under the PLRA, see *Woodford* v. *Ngo*, 548 U.S. 81, 94-103 (2006), and they may obtain the relief sought through that process. See *Ortwein* v. *Schwab*, 410 U.S. 656, 658-660 (1973) (per curiam) (finding that a judicial filing fee did not deprive welfare recipients of their due process rights when they had already been afforded an opportunity for an administrative remedy).

The canon of constitutional avoidance has a role to play only if the governing statute is ambiguous after utilizing all of the tools of statutory construction, and a serious constitutional doubt is presented. See *Department of Hous. & Urban Dev.* v. *Rucker*, 535 U.S. 125, 134-135 (2002); *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 494 (2001). Neither is true here.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
IAN HEATH GERSHENGORN
Deputy Solicitor General
NICOLE A. SAHARSKY
Assistant to the Solicitor General
BARBARA L. HERWIG
BENJAMIN M. SHULTZ
Attorneys

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APPENDIX

1. 28 U.S.C. 1915 provides:

Proceedings in forma pauperis

(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.

2. 28 U.S.C. 1915A provides:

Screening

(a) Screening.—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

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

(c) Definition.—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.