No. _____

In the Supreme Court of the United States

WILLIAM DAVID BURNSIDE,
Petitioner,
v.
T. WALTERS ET AL.,
Respondents.

APPLICATION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner, William David Burnside, moves for leave to proceed *in forma pauperis*. Today, Mr. Burnside is filing a Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit. Mr. Burnside was permitted to proceed *in forma pauperis* in the U.S. District Court for the Western District of Tennessee and in the U.S. Court of Appeals for the Sixth Circuit. His affidavit in support of this motion is attached.

Respectfully submitted,

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Counsel for Petitioner

December 17, 2012

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Sixth Circuit erred in holding—in conflict with all eleven other federal circuit courts of appeals—that the *in forma pauperis* statute, 28 U.S.C. § 1915(e)(2), prohibits indigent plaintiffs from amending their complaints.

PARTIES TO THE PROCEEDING

William David Burnside, identified in the caption, is the only petitioner.

Respondents include: T. Walters, 545B, Memphis Police Department, in his official and individual capacities (identified in the caption); Hicks, 566B, Memphis Police Department, in his official and individual capacities; Montgomery, 555B, Memphis Police Department, in his official and individual capacities; Cynthia Magellon Puljic, Executive Director, Alfred D. Mason YMCA; and YMCA of Memphis & The Mid-South, a Domestic Tennessee Corporation. Consistent with Sixth Circuit law in *in forma pauperis* cases, the district court dismissed Mr. Burnside's complaint before service on any of the defendants below, respondents here. Thus, none of the respondents participated in any of the proceedings below.

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William David Burnside respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Sixth Circuit.

ORDERS BELOW

The order of the U.S. Court of Appeals for the Sixth Circuit in consolidated Case Nos. 10–5790/6368, filed on April 27, 2012, is unpublished and reproduced in the Appendix at 1a–4a. The order of the court of appeals denying Mr. Burnside's petition for rehearing en banc, filed on September 27, 2012, is unpublished and reproduced in the Appendix at 15a.

The order of the U.S. District Court for the Western District of Tennessee dismissing Mr. Burnside's complaint is unpublished and reproduced in the Appendix at 5a–12a. The order of the district court denying Mr. Burnside's motion for relief from judgment under Federal Rule of Civil Procedure 60 is unpublished and reproduced in the Appendix at 13a–14a.

JURISDICTION

The judgment of the court of appeals was entered on April 27, 2012. Petitioner timely filed a petition for rehearing en banc, which was denied on September 27, 2012. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION AND RULE INVOLVED

The relevant statutory provision, 28 U.S.C. § 1915, is reproduced in full in the Appendix at 16a–18a. The subsection at issue here, section 1915(e)(2), states:

> 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.

28 U.S.C. § 1915(e)(2).

Federal Rule of Civil Procedure 15 provides, in relevant part:

> (a) Amendments Before Trial.
>
> (1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:
>
> (A) 21 days after serving it, or
>
> (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
>
> (2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.
>
> (3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

FED. R. CIV. P. 15(a).

STATEMENT OF THE CASE

The federal courts have a liberal policy of permitting amendments to complaints, codified in Federal Rule of Civil Procedure 15(a). Consistent with that policy, a district court considering dismissing sua sponte generally must give notice of its intent and permit the plaintiff an opportunity to amend or respond. But in the Sixth Circuit—unlike every other circuit—the rules are different for a plaintiff proceeding *in forma pauperis*. In the Sixth Circuit, an indigent plaintiff is barred from amending his complaint to avoid dismissal.

As amended by the Prison Litigation Reform Act of 1995 ("PLRA"), the provision of the *in forma pauperis* statute at issue, 28 U.S.C. § 1915(e)(2)(B)(ii), states that the district court "shall dismiss" a plaintiff's complaint if it fails to state a claim on which relief may be granted. In its decision below, a panel of the Sixth Circuit applied a rule adopted in *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997), and held that this statutory language "necessarily precludes amendment." App. at 3a. It affirmed the judgment of the district court dismissing with prejudice.

Since *McGore*, this Court has reviewed other restrictions read into the PLRA by the Sixth Circuit, and the eleven other circuit courts of appeals have weighed in on the question presented here. Rejecting the Sixth Circuit's other restrictions, this Court held that the statutory scheme "does not—explicitly or implicitly—justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself." *Jones v. Bock*, 549 U.S. 199, 214 (2007). And, consistent with *Jones v. Bock*, every other circuit has concluded that the *in forma pauperis* statute does not

bar indigent plaintiffs from amending their complaints. *See Brown v. Johnson*, 387 F.3d 1344, 1348-49 (11th Cir. 2004) ("Only the Sixth Circuit has held otherwise that, 'under the Prison Litigation Reform Act, courts have no discretion in permitting a plaintiff to amend a complaint to avoid a sua sponte dismissal.'" (quoting *McGore*, 114 F.3d at 612)).

The decision below stands contrary to the great weight of precedent and undermines the ability of indigent plaintiffs to litigate meritorious claims in federal court. The Sixth Circuit has repeatedly refused to bring its law into accord with this Court's precedent and the uniform view of the other courts of appeals. *See, e.g.*, Panel Order, App. at 3a ("Burnside's argument that other circuit courts permit such amendments is unpersuasive because their practices are not binding on us."). This case represents an ideal vehicle for resolving this important and frequently recurring question.

1. *Legal Background*. In 1996, Congress passed the Prison Litigation Reform Act of 1995, 110 Stat. 1321–71 (codified as amended in scattered titles and sections of the U.S. Code). At the time, the *in forma pauperis* statute, 28 U.S.C. § 1915, provided that a district court "may" dismiss a case "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d) (1995 ed.).

The PLRA altered that law in two ways. First, Congress added two new grounds for sua sponte dismissal—"fails to state a claim on which relief may be granted" and "seeks monetary relief against a defendant who is immune from such

relief"—in both the *in forma pauperis* statute, 28 U.S.C. § 1915(e)(2)(B) (2012 ed.), and in two new code provisions applicable to prisoner suits, 28 U.S.C. § 1915A(b) and 42 U.S.C. § 1997e(c)(1). Second, Congress changed "may dismiss the case" to "shall dismiss the case" in the *in forma pauperis* statute, 28 U.S.C. § 1915(e)(2) (2012 ed.), and also used the phrase "shall . . . dismiss" in the new prisoner suit provisions, *see* 28 U.S.C. § 1915A(b); 42 U.S.C. § 1997e(c)(1).

As amended by the PLRA, all three provisions now direct district courts to dismiss a complaint that fails to state a claim upon which relief may be granted. The Sixth Circuit has held that this language also prohibits indigent plaintiffs from amending their complaints; every other circuit has held otherwise.

2. *Factual Background*. On November 9, 2008, Mr. Burnside and his mother, Clara Lee Matthews, were talking on the phone about his health when his cell-phone battery died. Burnside had mentioned that he was suffering from pain and numbness, and said that he thought he might be having a stroke. Concerned for her son's safety, she tried to call him, his next door neighbor, and the front desk at the YMCA where he lived. Unable to reach anyone, she called 911.

Police officers and fire rescue responded to the YMCA and searched room to room for someone in need of help. Eventually, they identified Burnside as the object of the call and realized he was in no danger.

What happened next is the subject of Burnside's complaint. Defendant Officer Walters supposedly "found" that the 911 call came from Burnside (although it was actually made by his mother, Ms. Matthews) and decided to arrest him for the

misdemeanor offense of "911 Calls in Non-Emergency Situations." The officers reached into Burnside's residence, pulled him out, and handcuffed him. They refused to let him get his identification, his clothes, his phone, or his medications, or lock his door.

Later that afternoon, Officer Walters swore an Affidavit of Complaint and obtained a warrant for the already completed arrest. Officers Walters asserted: that he had "found" that the 911 call came from Burnside (although it was actually made by Ms. Matthews); that the YMCA staff reported Burnside had falsely called 911 in the past (although he contends that is false); and that he was taken into custody "to prevent the offense from continuing" (although Ms. Matthews's 911 call had long since ended). A handwritten note added that "[n]o misdemeanor citation was issued because defendant did not have ID," but officers had refused to let Burnside get his ID.

Burnside was jailed for approximately 10 days. Eventually, after he was pressured to plead guilty and refused, the prosecutor issued a *nolle prosequi*.

3. *Proceedings Below*. On November 6, 2009, Burnside filed a pro se complaint and a motion to proceed *in forma pauperis* in the U.S. District Court for the Western District of Tennessee, bringing claims under 42 U.S.C. § 1983 and state law and invoking the district court's jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1367. Following Sixth Circuit precedent, the district court screened Burnside's complaint for deficiencies before it was served on any of the defendants. App. at 6a–7a; *McGore*, 114 F.3d at 604–05 (holding that "before service of process is made on

the opposing parties, the district court must screen the case under the criteria of § 1915(e)(2) and § 1915A"). On June 1, 2010, without giving Burnside notice of its intent to dismiss and without giving him an opportunity to amend or respond, the district court sua sponte dismissed Burnside's complaint with prejudice.[1] App. at 5a–12a. Burnside appealed.

Burnside filed in the district court a motion for relief from judgment under Federal Rule of Civil Procedure 60, raising the question presented here, *see* Rule 60 Mem. at 5–6, and attaching a motion for leave to file an amended complaint with a proposed amended complaint. The district court denied the Rule 60 motion, App. at 13a–14a, and Burnside appealed. The two appeals were consolidated, and appellate counsel entered an appearance.

On April 27, 2012, without permitting oral argument,[2] a panel of the Sixth Circuit affirmed the judgment of the district court dismissing with prejudice. Citing *McGore*, the panel held that the statutory language of 28 U.S.C. §§ 1915(e)(2) and 1915A(b) "mandates that a district court 'shall dismiss' a complaint if it fails to state a claim upon which relief may be granted, which necessarily precludes amendment."[3] App. at 2a–3a. The panel concluded that the *in forma pauperis*

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[1] The district court's order and judgment purported to rely on both 28 U.S.C. §§ 1915(e) and 1915A. The district court erred by relying on section 1915A, as that provision applies only to prisoners. *See* 28 U.S.C. § 1915A(a), (c); *McGore* 114 F.3d at 608. The Sixth Circuit has held, however, that the pre-screening provisions of section 1915(e) and section 1915A both bar district courts from permitting amendments to complaints, *see McGore*, 114 F.3d at 612, and are "essentially identical," *id.* at 604, so the question presented here is unaffected by the reference to section 1915A.

[2] The panel stated that counsel waived oral argument, App. at 1a, which is not accurate, *see* Pl.-App. Supp. Br. at iv.

[3] Just as the district court did, the Sixth Circuit panel erred by relying on 28 U.S.C. § 1915A. *See supra* n.1.

statute "gives district courts 'no discretion in permitting a plaintiff to amend a complaint to avoid a sua sponte dismissal.'" App. at 3a (quoting *McGore*, 114 F.3d at 612). The panel added: "Burnside's argument that other circuit courts permit such amendments is unpersuasive because their practices are not binding on us." *Id.*

Burnside filed a petition for rehearing en banc, arguing that the Sixth Circuit should revisit its precedent in light of *Jones v. Bock* and the uniform view of the other courts of appeals. The Sixth Circuit denied his petition on September 27, 2012. App. at 15a.

REASONS FOR GRANTING THE PETITION

I. The Sixth Circuit's Decision Below Entrenches Its Split With The Other Eleven Circuit Courts of Appeals Over Whether The *In Forma Pauperis* Statute Prohibits Indigent Plaintiffs From Amending Their Complaints.

In *McGore v. Wrigglesworth*, the Sixth Circuit held that "courts have no discretion in permitting a plaintiff to amend a complaint to avoid a sua sponte dismissal." 114 F.3d at 612. The Sixth Circuit has since reaffirmed and expanded its rule, holding that "§ 1915 does not afford a district court discretion to permit a plaintiff to amend his complaint *after* its dismissal under § 1915(e)(2)." *Moniz v. Hines*, 92 F. App'x 208, 212 (6th Cir. 2004). Following this precedent, the panel below affirmed the district court's dismissal with prejudice. App. at 3a–4a.

The Sixth Circuit's rule has been rejected by every other circuit court of appeals. Indeed, every other circuit but one has held that paupers have the *same*

rights to amend as every other litigant.[4] Only the Eighth Circuit has held that a district court "need not allow a prisoner to amend his complaint prior to dismissal," *Love v. Andrews*, 8 F. App'x 602, 603 (8th Cir. 2001); but even that court has not barred district courts from allowing amendment, *see Hughes v. Banks*, 290 F. App'x 960, 962 (8th Cir. 2008) (remanding case dismissed under 28 U.S.C. § 1915A for consideration of a motion for leave to amend).

As the other circuits have recognized, the Sixth Circuit's rule is a sharp departure from the rules that apply to all other plaintiffs. Federal Rule of Civil Procedure 15 gives every plaintiff the opportunity to amend his or her complaint "once as a matter of course" within 21 days of service of the complaint or service of a

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[4] *See, e.g.*, *Griffiths v. Amtrak*, 106 F. App'x 79, 80 (1st Cir. 2004) ("By dismissing plaintiff's complaint, sua sponte, without giving him prior notice of the defect in his jurisdictional allegation, the district court deprived the plaintiff of his right to amend the complaint to cure the defect."); *Gomez v. USAA Fed. Savs. Bank*, 171 F.3d 794, 796 (2d Cir. 1999) ("[A] pro se plaintiff who is proceeding *in forma pauperis* should be afforded the same opportunity as a pro se fee-paid plaintiff to amend his complaint prior to its dismissal for failure to state a claim . . . ."); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 111 (3d Cir. 2002) (noting that section 1915(e)(2) does not say "anything about when to permit amendment. Thus, there is no reason to depart from our rule that plaintiffs whose complaints fail to state a cause of action are entitled to amend their complaint unless doing so would be inequitable or futile."); *Nottingham v. Sherill*, 131 F. App'x 427, 427 (4th Cir. 2005) (reversing sua sponte dismissal under 28 U.S.C. § 1915A because plaintiff should have been permitted to amend complaint); *Goldsmith v. Hood County Jail*, 299 F. App'x 422, 423 (5th Cir. 2008) ("In general, it is error for a district court to dismiss a pro se complaint without affording the plaintiff the opportunity to amend."); *Timas v. Klaser*, 23 F. App'x 574, 578 (7th Cir. 2001) ("The right to amend as a matter of course survives a grant of a motion to dismiss, which is analogous to a district court's sua sponte dismissal for failure to state a claim under 28 U.S.C. § 1915A." (internal citations omitted)); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) ("[N]othing in the statute requires us to read the language in a way that would deprive the district courts of their traditional discretion to grant leave to amend."); *Perkins v. Kansas Dep't of Corrs.*, 165 F.3d 803, 806 (10th Cir. 1999) ("Dismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend."); *Brown v. Johnson*, 387 F.3d 1344, 1349 (11th Cir. 2004) ("We agree with the majority of circuits that the PLRA does not preclude the district court from granting a motion to amend. Nothing in the language of the PLRA repeals Rule 15(a)."); *Razzoli v. Fed. Bureau of Prisons*, 230 F.3d 371, 377 (D.C. Cir. 2000) ("[N]othing has altered our long-standing rule that a sua sponte dismissal for failure to state a claim without leave to amend is reversible error unless the claimant cannot possibly win relief." (internal quotation marks omitted)).

responsive pleading or motion. FED. R. CIV. P. 15(a)(1). A plaintiff may further amend the complaint with "the court's leave," which shall be "freely" given "when justice so requires." FED. R. CIV. P. 15(a)(2).

Rule 15 and its liberal policy of permitting amendments apply even when a plaintiff faces dismissal. In general, when a district court in the Sixth Circuit considers dismissal sua sponte, it first must give the plaintiff a chance to amend the complaint:

> It has long been the rule in this circuit "that a district court faced with a complaint which it believes may be subject to dismissal must . . . notify all parties of its intent to dismiss the complaint [and] give the plaintiff a chance to either amend his complaint or respond to the reasons stated by the district court in its notice of intended *sua sponte* dismissal."

Benson v. O'Brian, 179 F.3d 1014, 1015 (6th Cir. 1999) (quoting *Tingler v. Marshall*, 716 F.2d 1109, 1112 (6th Cir. 1983)) (alterations in *Benson*).

Likewise, the Sixth Circuit and other circuits recognize that, in general, "[i]f it is at all possible that the party against whom the dismissal is directed can correct the defect in the pleading or state a claim for relief, the court should dismiss with leave to amend." 6 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 1483 (3d ed. 2010); *see also Brown v. Matauszak*, 415 F. App'x 608, 614–15 (6th Cir. 2011) (collecting cases from the 3d, 5th, 8th, 9th, 10th, and DC Circuits).[5]

[5] Other circuits are even more protective of the right to amend, requiring that a dismissal be with leave to amend unless it is clear that amendment would be futile. *See, e.g.*, *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) ("In a line of cases stretching back nearly 50 years, we have held that in dismissing for failure to state a claim under Rule 12(b)(6), a district court should grant leave

In *McGore*, the Sixth Circuit held that Congress intended to overrule Rule 15 as it applies to indigent plaintiffs. 114 F.3d at 612. And the Sixth Circuit concluded that Congress did so merely by using the phrase "shall dismiss" in the *in forma pauperis* statute. *Id.*

Other circuits, engaging in more careful analyses, have concluded otherwise. For example, in *Grayson v. Mayview State Hospital*, the Third Circuit examined the language of the PLRA, legislative history, and prior precedent. 293 F.3d at 109–114. It noted that section 1915(e)(2) does not say "anything about when to permit amendment." *Id.* at 111. Against the backdrop of Rule 15, the court was "'hesitant to conclude that Congress meant to change established procedures without a clearer indication than we have here.'" *Id.* at 111 (quoting *Shane v. Fauver*, 213 F.3d 113, 117 (3d Cir. 2000)). Moreover, if the statute were read to prohibit amendment, the court reasoned, "'it would seem that a court would be required to grant a motion to dismiss a technically defective claim even if a request for leave to amend to cure the defect were pending. We doubt that Congress wanted to require such a harsh, and seemingly pointless, result.'" *Id.* at 110–11 (quoting *Shane*, 213 F.3d at 117).

Reasoning similarly, the en banc Ninth Circuit reached the same conclusion:

> The statutory language says only that a court "shall dismiss" a complaint. It does not say that such a dismissal must be without leave to amend. Indeed, one can only reach that conclusion by reading the phrase "shall dismiss" as "shall dismiss without leave to amend." But nothing in the statute requires us to read the language in a way that

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to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.").

> would deprive the district courts of their traditional discretion to grant leave to amend.

Lopez, 203 F.3d at 1127. Like the Third Circuit, the Ninth Circuit sought "[a] clearer expression of congressional intent . . . before we discard 50 years of case law." *Id.*

Relying on the reasoning of the Third and Ninth Circuits and decisions from the clear majority of the other circuits, the Eleventh Circuit made the point most concisely: "Nothing in the language of the PLRA repeals Rule 15(A)." *Brown*, 387 F.3d at 1349.

II. The Decision Below Violates The Principles of *Jones v. Bock*.

In *Jones v. Bock*, this Court rejected other restrictions that the Sixth Circuit had read into the PLRA. In decisions dating back to *McGore*, the Sixth Circuit adopted rules requiring a prisoner to allege and demonstrate exhaustion in his complaint, permitting suits only against defendants identified by the prisoner in his grievance, and requiring courts to dismiss the entire action if the prisoner failed to satisfy the exhaustion requirement as to any single claim in his complaint. *See Jones*, 549 U.S. at 202. This Court concluded "that these rules are not required by the PLRA, and that crafting and imposing them exceeds the proper limits on the judicial role." *Id.* Providing guidance to the lower courts, the Court held that the statutory scheme "does not—explicitly or implicitly—justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself." *Id.* at 214.

In its decision below, however, the Sixth Circuit deviated from Rule 15's "usual procedural practice" regarding amendments well beyond what is specified in the statute itself. As every other circuit court of appeals has held, the phrase "shall dismiss" in section 1915(e)(2) does not prohibit the amendment of complaints. *See, e.g.*, *Brown*, 387 F.3d at 1349 ("Nothing in the language of the PLRA repeals Rule 15(a)."); *Grayson*, 293 F.3d at 111 (noting that section 1915(e)(2) does not say "anything about when to permit amendment."); *Lopez*, 203 F.3d at 1127 ("The statutory language says only that a court 'shall dismiss' a complaint. It does not say that such a dismissal must be without leave to amend."). Nowhere does the PLRA say anything about amending complaints or Rule 15.

Since *Jones v. Bock*, the Sixth Circuit has had multiple opportunities to bring its law into accord with this Court's precedent and the uniform view of the other courts of appeals. Each time, it has refused. *See, e.g.*, *Davis v. Mays*, 471 F. App'x 484 (6th Cir. 2012); *Bright v. Thompson*, 467 F. App'x 462 (6th Cir. 2012); *Dionne v. Sampson*, No. 11–1477, 2011 U.S. App. LEXIS 26126 (6th Cir. Oct. 5, 2011); *Threatt v. Birkett*, No. 07–1752, 2008 U.S. App. LEXIS 28074 (6th Cir. Feb. 15, 2008). The panel decision and the order denying rehearing en banc below are the Sixth Circuit's most recent refusals.[6]

[6] It is impossible to determine the number of cases in which the Sixth Circuit has applied its rule prohibiting indigent plaintiffs from amending their complaints. In many (perhaps most) cases decided without oral argument, Sixth Circuit panels enter orders that are not published, are never entered into a commercial electronic database, and are not accessible through the court's website. For example, as of December 14, 2012, the panel's April 27, 2012 order has not been published in any print publication, cannot be found on Westlaw or Lexis, and cannot be found via the "Opinion Search" page on the Sixth Circuit's website. *See* http://www.ca6.uscourts.gov/opinions/opinion.php.

III. This Case Presents An Ideal Vehicle For Resolving An Important And Recurring Issue Of Federal Law.

The pure question of law presented here was squarely presented to and passed upon by the Sixth Circuit panel. App. 2a–4a. And Burnside's case is typical of indigent plaintiffs in the Sixth Circuit, except for his particular diligence in raising the question presented. The district court screened and dismissed his complaint with prejudice before any of the defendants were served. *See* App. at 6a–7a; *McGore*, 114 F.3d at 604–05 (holding that "before service of process is made on the opposing parties, the district court must screen the case under the criteria of § 1915(e)(2) and § 1915A"). Still proceeding *pro se*, he then raised the question presented both on direct appeal and in his motion for relief from judgment under Federal Rule of Civil Procedure 60. Through counsel, he raised the question presented again in his supplemental brief on appeal, and once more in his petition for rehearing en banc. The decision below is thus a particularly appropriate vehicle for clarifying the rights of indigent plaintiffs under the PLRA and the Federal Rules of Civil Procedure.

Moreover, the question in this case is not only of significant legal importance, but of great practical importance as well. According to U.S. Census Bureau statistics, over one-seventh of people living in the Sixth Circuit are indigent: 16.5% of people in Tennessee live below the poverty line, as do 14.6% of people in Ohio, 14.9% in Michigan, and 16.9% in Kentucky. *See* United States Census Bureau, Income, Poverty and Health Insurance in the United States: 2011 – Tables &

Figures, http://www.census.gov/hhes/www/poverty/data/incpovhlth/2011/state.xls (last accessed December 14, 2012). Absent this Court's intervention, they will continue to face greater restrictions litigating meritorious claims in federal court than do indigent plaintiffs in any other part of the country, contrary to Congress's intent and this Court's precedent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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DECEMBER 17, 2012