No.

IN THE
Supreme Court of the United States

ANTOINE BRUCE,

Petitioner,

v.

CHARLES E. SAMUELS, JR., HARLEY G. LAPPIN, JOYCE K. CONLEY, RAYMOND E. HOLT, DELBERT G. SAVERS, RUFUS WILLIAMS, JOHN RATHMAN, LISA AUSTIN, LEE H. GREEN,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Prison Litigation Reform Act, 28 U.S.C. § 1915(b)(2), prisoners proceeding *in forma pauperis* must each month pay 20% of their existing income towards a federal case or appeal's filing fee, until satisfying the entire filing fee. The Fifth, Seventh, Eighth, and Tenth Circuits and the D.C. Circuit here have held that, where a prisoner has more than one federal case or appeal for which a filing fee is or remains owed, § 1915(b)(2) requires the prisoner to make a separate monthly 20% installment payment for each such filing fee, meaning that 40% of the prisoner's income would be taken in total per month if the prisoner still has filing fees for two matters outstanding, 60% if he has three filing fees outstanding, and even 100% if he has five filing fees outstanding. The Second and Fourth Circuits, in contrast, have held that § 1915(b)(2) caps the total to be taken from a prisoner at 20% per month irrespective of how many filing fees that prisoner might still owe, with the prisoner paying off each filing fee sequentially in the order in which it was incurred. The question presented is:

When a prisoner files more than one case or appeal in the federal courts *in forma pauperis*, does § 1915(b)(2) cap the monthly exaction of filing fees at 20% of the prisoner's monthly income regardless of the number of cases or appeals for which he owes filing fees?

ADDITIONAL PARTIES TO THE PROCEEDING BELOW

Appellants

Jeremy Brown (Federal Prisoner: 31123-074)

Andrew Wesley Hobbs (Federal Prisoner: 30723-077)

John Samuel Leigh (Federal Prisoner: 03857-087)

Jeremy Pinson (Federal Prisoner: 16267-064)

Movant

Mikeal Glenn Stine (Federal Prisoner: 55436-098)

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The August 5, 2014 opinion of the United States Court of Appeals for the District of Columbia Circuit is published at 761 F.3d 1 (D.C. Cir. 2014). This opinion is reproduced in the appendix ("Pet. App.") to this petition at 1a-18a. The D.C. Circuit's orders denying rehearing and rehearing en banc are unpublished and are reproduced in the appendix to this petition at 23a-25a.

JURISDICTION

Petitioner Antoine Bruce seeks review of the August 5, 2014 decision of the court of appeals denying his request to stay the collection of filing fees. A timely petition for rehearing and rehearing en banc was filed, which the court of appeals denied on October 22, 2014. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1915(b)(1) provides as follows:

> 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.

In addition, 28 U.S.C. § 1915(b)(2) provides as follows:

> 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.

STATEMENT OF THE CASE

This case presents an important question of statutory interpretation that affects potentially every prisoner who files more than one civil suit or appeal *in forma pauperis* ("IFP") in the federal courts, along with the prison officials having custody of such prisoners and the court clerks administering fees in IFP prisoner cases. The fee-collection provision of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b), requires an IFP prisoner to pay an initial partial filing fee and then to make monthly installment payments of 20% of the prisoner's income until the fee is paid in full. An open and recurring question is how those monthly installment payments are to be collected when an IFP prisoner owes filing fees for more than one case. Does § 1915(b)(2) permit a prisoner to make a single 20% payment each month, with the prisoner

paying off each filing fee sequentially in the order in which it was incurred (the "per prisoner" approach)? Or does the statute require the prisoner to make a separate 20% payment each month for each case or appeal filed, with the prisoner simultaneously making payments toward all of his existing obligations (the "per case" approach)?

Petitioner, a federal prisoner proceeding IFP, moved to stay collection of the filing fee he owed in the case below until he had completed paying the fee he owed in another case. In a lengthy decision, the D.C. Circuit denied Petitioner's motion, adopted the per-case approach, and ordered Petitioner to make separate 20% payments each month for every case in which he owes filing fees. The D.C. Circuit's decision comports with decisions by the Fifth, Seventh, Eighth, and Tenth Circuits. The Second and Fourth Circuits have reached a contrary view. In this series of conflicting circuit decisions, the respective courts of appeals have, at this late juncture, analyzed nearly every possible angle to the statutory construction question regarding § 1915(b)(2), but they are in deep division. In light of the mature circuit conflict, and given the overwhelming practical difficulties created for prisoners, prison officials, and courts (and their clerks) by the lack of a uniform national rule regarding the collection of installment payments when an IFP prisoner has more than one outstanding filing fee, the Court should grant the Petition.

In the proceedings below, a federal prisoner named Jeremy Pinson filed suit in the United States District Court for the District of Columbia, challenging the conditions of his confinement at the Federal Correc-

tional Institution in Talladega, Alabama. Pet. App. 2a. The district court held that venue was improper, and transferred the case to the Northern District of Alabama. *Id.*

Pinson then filed a mandamus petition in the D.C. Circuit, seeking to vacate the district court's transfer order and seeking to compel the district court clerk to accept certain filings that Pinson claimed the clerk had rejected. *Id.* Petitioner Antoine Bruce, also a federal prisoner, joined the mandamus petition, as did prisoners Jeremy Brown, Andrew Wesley Hobbs, and John Samuel Leigh. *Id.* at 4a-5a. They all moved to proceed IFP. *Id.* Separately, Bruce and Pinson moved to stay the D.C. Circuit's collection of filing fees, arguing that 28 U.S.C. § 1915(b) entitled them to defer the payment of fees to the D.C. Circuit until they had completed their payment of fees owed in other cases. Pet. App. 2a, 4a-5a.

The D.C. Circuit ultimately denied Pinson's motion to proceed IFP, but provided him time to pay his portion of the shared filing fee for the mandamus petition up front if he chose to proceed with the mandamus petition. *Id.* at 4a-8a. The court of appeals granted IFP status to Bruce, Brown, Hobbs, and Leigh, *id.* at 4a, 8a, but held that they lacked standing to challenge the district court's transfer of the underlying case to the Northern District of Alabama and the district court clerk's refusal to docket a filing. *Id.* at 9a-10a.

The D.C. Circuit then addressed the manner in which filing fees should be collected from Bruce (an issue that was moot as to Pinson in light of the court of appeals's conclusion that he could not proceed IFP). *Id.* at 11a-18a. It adopted the per-case approach.

The court focused on the "'overall statutory scheme'" of § 1915, and determined that every provision of § 1915, including the 20% installment provision, "appl[ies] to *each action or appeal* filed by a prisoner." Pet. App. 14a (emphasis in original, citation omitted). The court stated that it reached this conclusion by reading subsections (b)(1) and (b)(2) together.

Subsection (b)(1) provides that the prisoner must pay an "initial partial filing fee," calculated according to a formula provided in the statute. 28 U.S.C. § 1915(b)(1). The court held that the plain text of this subsection "calls for assessment of the initial partial filing fee *each time* a prisoner 'brings a civil action or files an appeal.'" Pet. App. 14a-15a (quoting 28 U.S.C. § 1915(b)(1)) (emphasis in original).

Subsection (b)(2) then states that "[a]fter payment of the initial partial filing fee," the prisoner must make monthly payments at a rate of 20% of his income from the preceding month. 28 U.S.C. § 1915(b)(2). The court reasoned that "[b]ecause the initial partial filing fee imposed in subsection (b)(1) acts as the 'triggering condition' for the monthly installments required by subsection (b)(2), the two provisions should be read in tandem." Pet. App. 15a. And "[g]iven that the initial fee required by subsection (b)(1) applies on a per-case basis, it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis." *Id*.

The court found that other subsections of § 1915 also supported the per-case approach. *Id.* at 15a-16a. The court pointed to: subsection (a)(2) (which requires prisoners to submit trust fund account statements to the court); subsection (e)(2) (which requires the court

to dismiss defective cases); and subsection (f)(1) (which allows the court to award costs). *Id.* Those subsections all refer to the prisoner-litigant's "civil action or appeal," "case," or "suit or action" – each time using the singular, as opposed to plural, form. Because those requirements apply on a per-case basis, the court concluded that it would be "incongruous" to interpret subsection (b)(2)'s 20% provision "to dictate the amount a prisoner may be required to pay each month for all his cases *in toto*." Pet. App. 16a.[1]

The D.C. Circuit concluded its analysis by finding that "the per-case approach comports with the PLRA's basic object," which was to "'deter prisoners from filing frivolous lawsuits.'" Pet. App. 17a (quoting *In re Kissi*, 652 F.3d 39, 41 (D.C. Cir. 2011)). Because the per-prisoner approach purportedly "would diminish the deterrent effect of the PLRA," the court found the per-case approach more consonant with the PLRA's purpose. *Id.*

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[1] Though the D.C. Circuit sought to focus on the statute's actual text, it missed the most pertinent sentence. In the key sentence, § 1915(b)(2) provides that "[t]he agency having custody of the prisoner shall forward payments from the prisoner's account to the *clerk* [singular] of the *court* [also singular] each time the amount in the account exceeds $10 until the filing *fees* [plural] are paid." The use of the singular words "clerk" and "court" indicates that a single clerk's office is to receive monthly payments even when there are numerous "*fees*" outstanding, a position consistent with the per-prisoner methodology of paying one court at a time (but sequentially) when there are fees outstanding from several courts. Other courts adopting the per-case approach have likewise missed the mixing of singulars and plurals in the relevant sentence when parsing § 1915(b)'s language. *See, e.g.*, *Atchison v. Collins*, 288 F.3d 177, 180-81 (5th Cir. 2002); *see infra* pp. 8-9.

REASONS FOR GRANTING THE PETITION

A. The Decision Below Deepens an Already Mature Conflict Among the Courts of Appeals

Seven of the courts of appeals have addressed § 1915(b)(2), and each has adopted one of two competing interpretations of the provision. Five circuits, including the D.C. Circuit in the case below, have adopted the per-case approach, while two others have adopted the per-prisoner approach. This circuit split is both deep and mature. Indeed, the D.C. Circuit acknowledged that its ruling would add to an already well-developed split among the courts of appeals, *see* Pet. App. 12a-13a, the contours of which have also been described in other circuit decisions. *See Torres v. O'Quinn*, 612 F.3d 237, 242 (4th Cir. 2010); *Atchison v. Collins*, 288 F.3d 177, 180 (5th Cir. 2002). Because these decisions (particularly now with the addition of the D.C. Circuit's analysis) exhaustively address the statutory construction questions under § 1915(b)(2), the circuit dispute is fully ripe for this Court's intervention, and the Petition therefore should be granted.

1. In addition to the D.C. Circuit's decision here, the Fifth, Seventh, Eighth, and Tenth Circuits have adopted the per-case approach.

a. Chronologically, the first appellate court to address the issue was the Seventh Circuit in *Newlin v. Helman*, 123 F.3d 429 (7th Cir. 1997), *overruled on other grounds by Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000), *and Walker v. O'Brien*, 216 F.3d 626 (7th Cir. 2000). The court in *Newlin* concluded that § 1915(b)(2) is ambiguous, in that it "does not tell us

whether the 20 percent-of-income payment is per case or per prisoner." *Id.* at 436. But the court nonetheless rejected the per-prisoner approach on the grounds that if prisoners were allowed to pay filing fees sequentially, then they would be able to "file multiple suits for the price of one, postponing payment of the fees for later-filed suits until after the end of imprisonment (and likely avoiding them altogether)." *Id.* The court declared that the PLRA was intended to require prisoners to "bear some marginal cost for each legal activity"; if prisoners were not required to pay fees soon after filing their lawsuits, those fees would not be collected at all. *Id.*

b. The Eighth Circuit followed suit the next year in *Lefkowitz v. Citi-Equity Grp., Inc.*, 146 F.3d 609 (8th Cir. 1998). Citing to *Newlin*, the court held that "[b]ecause the PLRA fee provisions were designed to require prisoners to bear financial responsibility for each action they take, the twenty-percent rule should be applied per case." *Id.* at 612.

c. Several years later, the Fifth Circuit also adopted the per-case approach in *Atchison v. Collins*, 288 F.3d 177 (5th Cir. 2002). In that case, the Fifth Circuit found the statutory language to be unambiguous. *Id.* at 180. In § 1915(b)(1), the statute provides that "[t]he court" in which a prisoner brings a civil action shall collect an initial partial filing fee, and in § 1915(b)(2), the statute mandates that 20% of the prisoner's monthly income then be paid to "the clerk of the court." The panel concluded that "[i]f 'the court' in § 1915(b)(1) is the court in which the instant action has been filed, irrespective of past suits, then 'the court' in § 1915(b)(2) presumably refers to the same

court." *Id.* at 180-81. It held that when "these two provisions are . . . read together as part of a coherent scheme," the "'per case' interpretation is mandated." *Id.* at 181. Otherwise, the court held, the per-prisoner interpretation would lead to the "absurd result[]" that "the clerk of the court" would refer to more than one person when a prisoner files suit in more than one court – and then "[w]hich clerk collects the fee?" *Id.* Finally, the panel dismissed any concerns that the per-case approach raised constitutional questions. Because "[t]he Supreme Court has held that indigent persons have no constitutional right to proceed *in forma pauperis*," and prisoners are guaranteed the basic necessities of life, the Fifth Circuit concluded that the per-case scheme does not deprive prisoners of any constitutionally protected right. *Id.* (citing *M.L.B. v. S.L.J.*, 519 U.S. 102, 119 (1996)).

d. The next appellate court to adopt the per-case approach was the Tenth Circuit. In *Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x 821, 830-31 (10th Cir. 2010), the court parsed § 1915(b) and quoted extensively from what it called the "thoughtful discussion" of the 20% issue in *Hendon v. Ramsey*, 478 F. Supp. 2d 1214 (S.D. Cal. 2007). The court adopted *Hendon*'s reasoning that because other requirements imposed upon prisoners by § 1915 are clearly meant to apply on a per-case basis, the 20% provision should be read the same way. Specifically, the court pointed to § 1915(a)(2) and (b)(1), which, respectively, require prisoner litigants to submit a certified copy of their trust fund account and pay an initial partial filing fee in each case they file. The court quoted *Hendon* for its conclusion that "'the overall statutory scheme is written in a manner that requires prisoners to complete

procedures and pay fees on a per case basis, rather than a per prisoner basis.'" 374 F. App'x at 830-31 (quoting *Hendon*, 478 F. Supp. 2d at 1219). Particularly persuasive to the court was that § 1915(b)(1), which imposes an initial-filing-fee requirement in every case, is intended to be read in conjunction with § 1915(b)(2), which contains the 20% payment requirement. *Id*. at 831.

The court also found that the per-case approach was the better interpretation because it furthered the PLRA's "overarching purpose of imposing the installment-payment obligations uniquely on prisoners" in order to "reduce frivolous prisoner litigation by making all prisoners seeking to bring lawsuits or appeals feel the deterrent effect created by liability for filing fees." *Id*. (internal quotation marks and citation omitted). The court found that the meaning of § 1915(b)(2) was "fully intelligible" when the statute is viewed as a whole. *Id*. Last, the court rejected any contention that the per-case approach presented constitutional problems, because even if 100% of a prisoner's monthly income were withheld, the prisoner would still be guaranteed access to basic necessities, including materials needed for court correspondence. *Id*. at 832.

2. On the opposite side of the split, both the Second and Fourth Circuits have adopted the per-prisoner approach.

a. In *Whitfield v. Scully*, 241 F.3d 264 (2d Cir. 2001), the Second Circuit recognized that either the per-case or the per-prisoner approach could plausibly be adopted, and held that the statutory language "fail[ed] to provide a definitive answer." *Id*. at 276. However, "keeping in mind the Supreme Court's ad-

monition that § 1915 should be applied 'so as not to deprive litigants of the "last dollar they have,"'" *id.* at 275 (quoting *In re Epps*, 888 F.2d 954, 967 (2d Cir. 1989), quoting *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)), the Second Circuit opined that the statute nonetheless pointed toward the per-prisoner approach, because the "references to an initial partial payment of 'any court fees,' 28 U.S.C. § 1915(b)(1), and to the imposition of a single 'judgment' for costs at the end of a suit, *id.* § 1915(f)(1), imply that multiple fees and costs should each be subject to a uniform ceiling." *Id.* at 276.

The court noted that the per-case interpretation could result in 100% of a prisoner's income being withheld. *Id.* ("In the present case, for example, Whitfield's filing fees for the initial complaint and two appeals, plus the two awards of costs against him, could create five encumbrances subject to recoupment at a total rate of 100 percent."). The court concluded that "this result arguably could pose a serious constitutional quandary as to whether an unreasonable burden had been placed on the prisoner's right of meaningful access to the courts." *Id.* at 277. Though the court did not decide whether such a result would actually be unconstitutional, it did employ the well-known canon of statutory interpretation that courts should "'avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question.'" *Id.* (quoting *Gomez v. United States*, 490 U.S. 858, 864 (1989)). The court found that this principle required it to adopt the per-prisoner interpretation, because that interpretation was a reasonable one. *Id.*

The Second Circuit explicitly rejected the Seventh Circuit's contrary reasoning in *Newlin*. The Second Circuit did not share *Newlin*'s concern that prisoner litigants would postpone payment until their release and thus avoid payment altogether. To the contrary, the Second Circuit noted that (at least under its own precedent), prisoners would not be absolved of liability upon release. *Id*. at 277. The court concluded that while the sequential approach would cause some delay in payments and might lessen the incentive for prisoners not to litigate, "that alternative is far preferable to adopting a construction of the statute that could render it unconstitutional." *Id*.

b. In *Torres v. O'Quinn*, 612 F.3d 237 (4th Cir. 2010), the Fourth Circuit provided the most thorough analysis of the issue to that point. In a 2-1 panel decision, the court found the per-prisoner approach to be "the most plausible reading of the statute, in light of Congress' intent as reflected in legislative history and the structure of the statute, and in the face of a looming constitutional question posed by the alternative interpretation." *Id.* at 242. In its discussion, the court rejected the arguments raised by the circuits that had adopted the per-case approach.

In particular, the court found the Fifth Circuit's concern in *Atchison* – that the per-prisoner interpretation could result in the "clerk of the court" being more than one person—to be "misplaced." *Id.* at 243. It concluded that the PLRA requires the agency housing the prisoner to collect 20% of his income and forward it to the court, and in the event that multiple courts are owed money, those debts should be paid sequentially, in the order in which the prisoner filed suit. *Id*. The

court also found *Atchison*'s "casual dismissal" of the serious constitutional questions implicated by the per-case interpretation to be "deeply troubling." *Id.* The court emphasized that, under well-settled Supreme Court precedent, indigent plaintiffs must be allowed to proceed *in forma pauperis* when seeking to vindicate certain fundamental rights. As one example, the court noted that *M.L.B. v. S.L.J.* – the very case cited by the Fifth Circuit for the proposition that indigent litigants have no constitutional right to proceed IFP – in fact held that an indigent litigant must be permitted cost-free appellate review of the termination of parental rights. 612 F.3d at 243 (citing *M.L.B.*, 519 U.S. at 129).

From there, the Fourth Circuit rejected the Seventh Circuit's finding in *Newlin* that the per-case approach should be adopted because the alternative would purportedly allow prisoners to put off paying their fees indefinitely, if ever. The court found that this conclusion rested on "highly debatable assumptions," including the belief that most prisoner-litigants serve sufficiently short sentences that they will be released from prison before fully paying the fees they owe, and "that Congress is powerless to collect unpaid filing fees from prisoners after they are released." *Id.* at 244.

Turning to the language of § 1915, the Fourth Circuit agreed with the Seventh Circuit that as to whether the per-case or per-prisoner approach is correct, the statute is "not ambiguous; rather, it is simply *silent*." *Id.* at 244 (emphasis in original). The court explained that it must therefore "determine what Congress would have done had it thought about the problem," ultimately concluding that the most natural

reading of the statute supported the per-prisoner approach. *Id.* at 245. Specifically, the court zeroed in on § 1915(b)(1)'s requirement that the court collect "any court fees" according to the prescribed formula. The court explained that the word "any" should be given its most natural meaning, which is "any and all." *Id.* at 245. In light of that definition, the 20% formula applies to all fees owed by the prisoner, such that "§§ 1915(b)(1) and (b)(2) forbid deducting more than twenty percent of the inmate's income for monthly payments of *all* the court fees from *all* suits in the aggregate." *Id.* at 246 (emphasis in original).

The court also rejected the position later adopted by the D.C. Circuit in this case, in which the D.C. Circuit found that because subsection (b)(1) triggers the operation of subsection (b)(2), the monthly installment payments mandated by (b)(2) are necessarily collected on a per-case basis. The Fourth Circuit recognized that "deeming § 1915(b)(2) 'simply' to 'latch on' to § 1915(b)(1) . . . begs the question presented." *Id.* at 249. The former approach "bespeaks the kind of mechanical statutory interpretation that can lead a court to stray from the full achievement of congressional goals" and reflects "a conclusion unsupported by genuine analysis." *Id.* at 248, 249. In fact, the Fourth Circuit held that the two subsections "are materially distinct in purpose and effect," such that there is no reason to read (b)(2) as operating in the same manner as (b)(1). *Id.* at 249. It concluded:

> there is absolutely nothing inherent in Congress' decision to require, in § (b)(1), an exaction of 20% of the inmate's 'average monthly balance' . . . as a 'partial payment' of a

> filing fee at the commencement of each case or appeal, which compels the conclusion that the subsequent [20%] 'monthly payments,' required by § (b)(2) . . . must be withheld without regard to the number of cases and appeals pending at the same time.

Id. at 250.

The court also determined the per-prisoner approach to be perfectly in line with the overall purpose of the PLRA, in that prisoners would be deterred from filing frivolous lawsuits as effectively as ever. As an initial matter, the per-prisoner approach still requires all prisoner-litigants eventually to pay their filing fees in full – "it is merely a question of timing." *Id.* at 246. Moreover, frequent filers of meritless lawsuits would continue to be blocked from court by virtue of the "three strikes" provision in 28 U.S.C. § 1915(g), which the court later referred to as "Congress' preferred method for barring access to federal district court to mischievous inmates intent on engaging in 'recreational litigation.'" *Id.* at 246, 250.

The court found support for the per-prisoner approach in the "admittedly meager" legislative history of the PLRA. *Id.* at 246. It viewed several senators' floor statements as persuasive, insofar as the filing fee requirements were not meant to impose a crushing burden on prisoners, which they would if (as under the per-case interpretation) 100% of the prisoners' incomes could be depleted.[2] One senator referred to the filing

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[2] For example, "an inmate could file three lawsuits in district court, all of which present colorable and plausible, but ultimately losing, claims." *Torres,* 612 F.3d at 247. "If the district court

fee requirement as a "'modest monetary outlay,'" and explained that "'[t]he filing fee is small enough not to deter a prisoner with a meritorious claim, yet large enough to deter . . . multiple filings.'" *Id.* at 247 (quoting statement of Sen. Kyl, 141 Cong. Rec. S7526, (daily ed. May 25, 1995)) (alternation in original). Other senators made clear that the fees were not intended to be punitive or to deter meritorious lawsuits (as they likely would under the per-case approach). One senator was quoted as stating, "'If somebody has a good case, a prisoner, let him file it.'" *Id.* (quoting statement of Sen. Reid, 142 Cong. Rec. 5,118 (1996)). Another said, "'I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised.'" *Id.* (quoting statement of Sen. Hatch, 141 Cong. Rec. 27,042 (1995)). In light of the full legislative history, the Fourth Circuit found that "Congress could not possibly have intended" the result reached by the per-case circuits. *Id.*

Finally, the court echoed the Second Circuit's constitutional avoidance argument by noting that the per-case approach "could present a constitutional problem of access to courts for prisoners." *Id.* at 247-48. Some prisoners, the court noted, have "struck out" under § 1915(g), such that they are required to pay their entire

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grants summary judgment against the inmate in each case, the inmate would be foreclosed from pursuing what could be a meritorious appeal in the third case because the three district court filing fees (60%) coupled with the filing fees for the appeals in the first two cases (40%) would exhaust his trust fund account and he could not pay the appellate filing fee, and therefore could not appeal, the adverse summary judgment in the third case." *Id.*

filing fees up front. For such prisoners who are also subject to simultaneous withdrawal of filing fees from previous suits, the per-case approach could leave them with no assets, and therefore no ability to file any lawsuits, save those that meet § 1915(g)'s exception for prisoners who are in "imminent danger of serious physical injury." But as the court noted, many prisoners may seek to vindicate violations of fundamental, constitutionally protected rights, even though those violations do not place them in imminent danger of physical harm. *Id*. at 248. For example, a three-strikes prisoner whose assets are subject to 100% garnishment, and whose right to free exercise of religion had been abridged, would have no recourse in the federal courts. *See id*. n.12. The troubling constitutional implications of such circumstances, the court suggested, were yet another reason to reject the per-case interpretation.

3. Within the circuits that have not yet reached this issue at the appellate level, district court opinions indicate that the split will only continue to grow. In the Sixth and Ninth Circuits, district courts have adopted the per-case approach, while district courts in the First and Third Circuits have adopted the per-prisoner approach. *Compare Hendon v. Ramsey*, 478 F. Supp. 2d 1214, 1219 (S.D. Cal. 2007) (adopting per-case approach); *Samonte v. Frank*, 517 F. Supp. 2d 1238, 1243 (D. Haw. 2007) (same); *Lyon v. Kentucky State Penitentiary*, Nos. 5:02CV–P53–R, 5:03CV-P10-R, 2005 WL 2044955, at *1 (W.D. Ky. Aug. 23, 2005) (same); *Suggs v. Caballero*, No. 06-13931, 2007 WL 541909, at *1 (E.D. Mich. Feb. 16, 2007) (same); *with Lafauci v. Cunningham,* 139 F. Supp. 2d 144, 147 (D. Mass. 2001) (adopting per-prisoner approach); *Fortune*

v. Patterson, No. 04–377, 2009 WL 3166274, at *4 (W.D. Pa. Sept. 28, 2009) (same).

4. Petitioner's case is an ideal vehicle for addressing this recurring, already exhaustively-debated issue. The facts below are straightforward and would allow this Court to resolve cleanly a deep split among the circuits. The D.C. Circuit directly addressed the question in the proceedings below, and the case carries with it no complicating corollary issues. And despite the number of circuit court decisions on the question presented, we are unaware of any previous petitions for certiorari that have raised it. This case, in which petitioner is represented by counsel, provides the Court with the opportunity to resolve the conflict on how § 1915(b)(2) applies. The question is one that is sure to continue arising, and the appellate courts that have not yet faced it are likely to do so soon. *See*, *e.g.*, *Grenning v. Miller-Stout*, 739 F.3d 1235, 1242 (9th Cir. 2014) (acknowledging the need to resolve whether the per-case or per-prisoner approach is correct, but directing the district court to consider the issue in the first instance).[3]

[3] The Court has granted certiorari this Term in a case concerning how the PLRA's three-strikes provision should be interpreted. *See Coleman-Bey v. Tollefson*, No. 13-1333. Argument in that case is scheduled for February 23, 2015.

B. The Current Lack of a Nationally Uniform Rule Creates Insuperable Practical Difficulties for Prisoners, Prison Officials, and Courts

The current circuit conflict creates considerable practical confusion regarding the collection of fees imposed by § 1915(b)(2). The difficulties are particularly perplexing where a prisoner has filed suit in both per-case and per-prisoner circuits. For instance, consider a situation in which an indigent prisoner has filed three suits. Assume that he files his first suit in the Second Circuit and begins paying off his filing fee at a rate of 20% of his income. He is later transferred to a prison within the Fourth Circuit, where he files another case. Because the Fourth Circuit follows the per-prisoner approach, the new prison still collects just 20% of his income, all of which continues to be paid toward the initial Second Circuit case. The Fourth Circuit court waits its turn and will begin receiving payments once the first case is paid off.

Then imagine that the prisoner files a third lawsuit within the D.C. Circuit.[4] Because the D.C. Circuit follows the per-case approach, assume that the court demands immediate payment at 20% of the prisoner's income. Here, numerous questions arise. Should the prison begin withholding 40% of the prisoner's income, and pay the courts in the Second and D.C. Circuits while the Fourth Circuit court continues to wait? If the prisoner continues to file lawsuits in per-case circuits, can those courts also "cut in line" ahead of the

[4] Though still imprisoned within the Fourth Circuit, the prisoner could file suit in a D.C. federal court if, for example, he were suing a D.C.-based federal government agency or official.

Fourth Circuit? Because the prison sits in the Fourth Circuit, should the prison refuse to send a payment to the clerk seeking the payment in the D.C. Circuit, given that the per-prisoner approach governs in the Fourth Circuit? These dizzying administrative questions, which have no clear answers, demonstrate the level of confusion federal courts and prison administrators encounter and will continue to encounter – potentially on a daily basis – if this Court does not resolve the question presented and put in place a uniform national rule.

Practical problems on how fee collection should be carried out still remain even if one were to assume that the per-case approach is correct. Consider the facts of *Torres*. Torres filed an initial suit, and the prison subsequently garnished 20% of his income for that suit's fees. After Torres filed a second lawsuit, the prison began deducting an additional 20% of his income – as would happen in a per-case circuit. But upon receiving those funds, the district court, without any guidance from § 1915, could only guess how the money should be applied. Should 20% of Torres' income be applied to the first case, and 20% to the second? Or should all 40% be applied to the first case until that fee is paid off? As the Fourth Circuit pointed out, the district court opted for the second method.

The Court should also grant the Petition because the circuit split, if left unresolved, could incentivize forum shopping among prisoner-plaintiffs. This conclusion rests on two premises: (1) prisoners enjoy some leeway in where they file lawsuits; and (2) prisoners will naturally avoid filing suit in per-case circuits and be drawn toward per-prisoner circuits. Support for the

first premise can be found in 28 U.S.C. § 1391, which governs venue in federal court cases. Specifically, § 1391(e)(1) provides that actions against federal officers or employees, acting in their official capacities, can properly be brought in any judicial district where the defendant resides, where the incident took place, or where the plaintiff resides. Because prisoners frequently file cases against prison and other government officials concerning prison conditions, they will sometimes have the option to file suit either in the district where the prison is situated, or in their "home" district. A prisoner's place of residence for purposes of venue is *not* the location of the prison, but, rather, where that prisoner resided before being incarcerated. *See Urban Indus., Inc. v. Thevis*, 670 F.2d 981, 986 (11th Cir. 1982) (prisoner's Georgia residency did not change when he was incarcerated for several years in an Indiana federal prison); *Cohen v. United States*, 297 F.2d 760, 774 (9th Cir. 1962) ("One does not change his residence to the prison by virtue of being incarcerated there."); *Bontkowski v. United States*, No. 04-cv-552, 2005 U.S. Dist. LEXIS 35140, at *5 (M.D. Fla. Oct. 25, 2005) ("[A] prisoner's place of incarceration is not his residence for purposes of venue.").

***

In sum, the D.C. Circuit's decision deepens a widely recognized conflict on the question presented. Similarly situated IFP prisoners are subject to vastly different treatment with regard to payment for access to the courts, depending solely on the circuit in which they file suit. And absent a nationally uniform rule, the administration of fee collection presents significant practical problems, with courts (and their clerks) and

prisons subject to conflicting policies that they must simultaneously implement and with courts also facing the specter of forum shopping.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JANUARY 2015

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 14, 2013

Decided [and Filed] August 5, 2014

No. 10-5059

JEREMY PINSON, ET AL.,
APPELLANTS

v.

CHARLES E. SAMUELS, JR., ET AL.,
APPELLEES

On Petition for Writ of Mandamus
(No. 1:10-cv-00092)

Dawn E. Murphy-Johnson, appointed by the court, argued the cause as *amicus curiae* for appellants. With her on the briefs was *Anthony F. Shelley*, appointed by the court.

Wynne P. Kelly, Assistant U.S. Attorney, argued the cause for appellees. With him on the brief were *Ronald C. Machen, Jr.*, U.S. Attorney, and *R. Craig Lawrence*, Assistant U.S. Attorney.

Before: GARLAND, *Chief Judge*, and HENDERSON and SRINIVASAN, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* SRINIVASAN.

SRINIVASAN, *Circuit Judge*: Jeremy Pinson is a federal prisoner serving a twenty-year sentence for threatening the President, knowingly and willfully making a false statement to a United States Marshal, and mailing threatening communications. Pinson has made frequent use of the federal courts during his time in prison, having filed more than 100 civil actions and appeals across the nation. In this case, filed in the District of Columbia, Pinson challenges the conditions of his confinement at the Federal Correctional Institution in Talladega, Alabama. The district court determined that venue in the District of Columbia was improper and ordered the action transferred to the Northern District of Alabama. Pinson then filed a mandamus petition in this court seeking to vacate the district court's transfer order, and also to compel the district court clerk to accept certain rejected filings. Four fellow prisoners join his petition, and all of them seek to proceed *in forma pauperis* in this court. Pinson and one other petitioner also moved to stay collection of the filing fees, arguing that the federal *in forma pauperis* statute entitles them to defer the payment of fees in this case until they complete their payment of fees owed in other cases.

Because Pinson has run afoul of the Prison Litigation Reform Act's three-strikes provision and has failed to demonstrate that he qualifies for the imminent danger exception, we deny his motion to proceed *in forma pauperis*. We also hold that the remaining petitioners lack standing to challenge either the transfer order or the clerk's rejection of the filings. Finally, we deny the motion to stay the collection of filing fees pending the payment of fees in other cases.

I.

In December 2009, Pinson filed a complaint in the United States District Court for the District of Columbia, naming several Bureau of Prisons (BOP) officials as defendants. At the time, he was incarcerated in the Special Management Unit (SMU) of the Federal Correctional Institution in Talladega. SMUs house gang-affiliated and other disruptive inmates who present unique security concerns. *See* BOP Program Statement 5217.01 (Nov. 19, 2008). Pinson's complaint alleged that SMUs are "unconstitutionally violent and dangerous" in violation of the Eighth Amendment. App. 9. He claimed that his designation to an SMU placed him "in imminent danger" because BOP officials failed to identify him as a former associate of a gang and to separate him from members of rival gangs. App. 8-9. He further alleged that the defendants knew that he was a homosexual who thus would "face[] a substantial risk of harm" if designated to an SMU. App. 8. Pinson moved to proceed *in forma pauperis* (IFP) pursuant to 28 U.S.C. § 1915.

In January 2010, the district court issued an order transferring Pinson's case to the Northern District of Alabama. The court determined that venue did not properly lie in the District of Columbia "[b]ecause none of the alleged events forming the basis of the complaint occurred in the District." Transfer Order, ECF No. 3, App. 21. The court stated that Pinson's IFP application would be decided by the transferee court. *Id.*

In March 2010, after unsuccessfully moving for reconsideration of the transfer order, Pinson filed a notice of appeal. This court construed the notice as

a petition for a writ of mandamus, and ordered Pinson to pay the $450 docketing fee or to file a motion to proceed IFP. Pinson moved to proceed IFP, as well as to stay any collection of filing fees until he completed payment of filing fees owed in other cases he had brought.

Pinson, joined by several fellow SMU inmates, then submitted a "Motion for Joinder of Appellees and for Appointment of Counsel." According to that motion, the other inmates had attempted to join Pinson's lawsuit by filing a "Motion for Joinder" in the district court. The prisoners claimed to have submitted the Motion for Joinder twice, once prior to the transfer of the case and once as an accompaniment to Pinson's motion for reconsideration of the transfer order. The prisoners argued that the district court clerk exceeded his authority by allegedly returning the motion unfiled on both occasions. They also submitted an amended notice of appeal clarifying their intention to challenge both the transfer order and the clerk's rejection of the Motion for Joinder. This court construed the amended notice of appeal to be a supplement to the mandamus petition.

Over the next several years, the parties engaged in an extended back-and-forth concerning Pinson's eligibility for IFP status and his motion to stay the collection of filing fees. A motions panel of this court dismissed all the prisoners attempting to join the case (for failure to prosecute) except Andrew Hobbs and Jeremy Brown, both of whom were granted IFP status. The panel also appointed an amicus curiae to present arguments in favor of the petitioners. Another motions panel later reinstated two of the previously dismissed prisoners, Antoine

Bruce and John Leigh, as petitioners, and ordered them to file completed motions for leave to proceed IFP. Bruce also joined Pinson's motion to stay the collection of filing fees.

II.

We first consider Pinson's request to proceed IFP before this Court, which we deny. The federal IFP statute, codified at 28 U.S.C. § 1915, generally authorizes courts to waive ordinary filing fees for an indigent litigant seeking to bring a lawsuit. *See* 28 U.S.C. § 1915(a)(1). In 1996, prompted by widespread concerns that inmates had been flooding the courts with meritless claims, Congress enacted the Prison Litigation Reform Act (PLRA). *See Chandler v. D.C. Dep't of Corr.*, 145 F.3d 1355, 1356 (D.C. Cir. 1998). The PLRA substantially amended 28 U.S.C. § 1915 with regard to prisoner-litigants. Unlike other litigants, prisoners accorded IFP status can no longer avoid payment of filing fees altogether. They instead are permitted to pay in monthly installments rather than in one, up-front payment. 28 U.S.C. § 1915(b).

Additionally, prisoners who have incurred three or more "strikes" face a potential bar against proceeding IFP:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section [authorizing IFP proceedings] 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.

28 U.S.C § 1915(g). Because it is undisputed that Pinson has accumulated at least three strikes, the statute prohibits him from proceeding IFP unless he falls within the imminent danger exception.

In assessing imminent danger, we examine the conditions faced by Pinson at the time he initiated his action. Both sides urge us to broaden the inquiry to encompass later developments. Amicus points to the August 2010 murder of another SMU inmate (who was an attempted co-petitioner), as well as an alleged January 2011 incident in which Pinson was nearly stabbed. The government, for its part, contends that Pinson's relocation to an Administrative Maximum facility in Florence, Colorado, renders moot his claim of imminent danger concerning his confinement in the Talladega SMU. We reject the invitation to take into account those subsequent events.

Our decision in *Mitchell v. Federal Bureau of Prisons*, 587 F.3d 415 (D.C. Cir. 2009), precludes consideration of post-complaint developments when assessing the applicability of the imminent danger exception. We explained there that "we assess the alleged danger at the time [the prisoner] filed his complaint and thus look only to the documents attesting to the facts at that time, namely his complaint and the accompanying motion for IFP status." *Id.* at 420. That approach squares with the statute's temporal reference point: the initial act of "bring[ing]" a lawsuit. 28 U.S.C. § 1915(g); *see Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th

Cir. 2007). Section 1915(g) directs attention to whether the prisoner "is under imminent danger of serious physical injury" when he "bring[s]" his action, not to whether he later in fact suffers (or does not suffer) a serious physical injury.

The provision's status as a mere "screening device" reinforces that understanding. *Andrews*, 493 F.3d at 1050, 1055. Otherwise, the inquiry into imminent dangerousness could require examining myriad post-filing developments and adjustments of confinement conditions that may transpire during the course of a lawsuit (and that often attend an inmate's imprisonment). Restricting the inquiry to the allegations in a prisoner's complaint better coheres with § 1915(g)'s "limited office." *Id.* at 1055.

Turning, then, to the allegations in Pinson's complaint (and his accompanying motion for IFP status), his claim of imminent danger closely resembles one we rejected in *Mitchell*. Mitchell's complaint alleged that "even though BOP knew he had testified for the government, it illegally transferred him to USP Florence, a prison known for murders and assaults on . . . anyone who has been known as a snitch, and where he was nearly murdered." 587 F.3d at 420-21 (ellipsis in original) (internal quotation marks omitted). This court found that Mitchell had "failed to allege that the danger he faces is imminent." *Id.* at 421. With respect to the alleged attack against Mitchell, the court noted that he had "wait[ed] until seventeen months after the . . . attack to file his complaint." *Id.* With respect to his general allegation that the facility was known to present dangers to inmates who testify for the government, the court concluded that "neither the

complaint nor his IFP motion alleges any ongoing threat." *Id.*

Pinson's allegations of imminent danger are materially indistinguishable from those found inadequate in *Mitchell.* Pinson contends that, as a homosexual and former gang member, his designation to the Talladega SMU alongside members of rival gangs placed him in imminent danger of death or serious bodily injury. Like Mitchell, Pinson's claim rests on the BOP's decision to designate him to a particular facility notwithstanding its reputation as a dangerous place for inmates possessing certain characteristics—here, as a rival gang-member and homosexual, and in *Mitchell*, as a government "snitch." The *Mitchell* court found such contentions insufficient to satisfy the imminent danger exception, even though Mitchell, unlike Pinson, further alleged that he had already been attacked by the time he filed his complaint. We see no ground for reaching a different conclusion here.

Because Pinson fails to qualify for the imminent danger exception to the three-strikes rule, we deny his motion for IFP status. If he wishes to proceed, he has thirty days from the date of this opinion to pay the filing fee up front. *See Mitchell*, 587 F.3d at 422. If he elects not to proceed, no fees will be collected. *See Smith v. District of Columbia*, 182 F.3d 25, 30 (D.C. Cir. 1999). Pinson's co-petitioners, by contrast, have not accumulated three strikes. This court already granted IFP status to Hobbs and Brown, and we now grant IFP status to Bruce and Leigh. We therefore proceed to consider the mandamus petition with regard to those four petitioners.

III.

The mandamus petition challenges both the district court clerk's refusal to docket a "Motion for Joinder" and the district court's transfer of the case to the Northern District of Alabama. We conclude that the remaining petitioners lack standing to raise either of those claims.

To establish Article III standing, a plaintiff must demonstrate that "(1) [he] has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180-81 (2000) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992)). Because the elements of standing "are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. Here, moreover, petitioners seek mandamus relief, a "drastic" remedy "invoked only in extraordinary situations." *Kerr v. U.S. Dist. Court for N. Dist. of Cal.*, 426 U.S. 394, 402 (1976).

Petitioners contend that the district court clerk twice refused to file a "Motion for Joinder" which they had submitted in an attempt to join the action below. While petitioners aver in their pleading that they were injured as a result of the

clerk's alleged actions, they provide no evidence that the Motion for Joinder in fact existed, let alone that it was submitted to the district court. The record contains no reference to any such motion despite petitioners' contention that it was twice returned to Pinson stamped "received." Nor do petitioners give any explanation for the absence of any reference to the motion in the record. In those circumstances, petitioners fail to support their claim of injury "with the manner and degree of evidence required" for mandamus relief. *Lujan*, 504 U.S. at 561; *see Sierra Club v. EPA*, 292 F.3d 895, 898-902 (D.C. Cir. 2002).

Petitioners also lack standing to challenge the transfer of Pinson's complaint to the Northern District of Alabama. Petitioners were not parties to the suit below, and "non-parties usually lack standing to challenge venue dispositions." *In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 116 (2d Cir. 1992); *see also United States v. U.S. Dist. Court, S. Dist. of Tex.*, 506 F.2d 383, 384 (5th Cir. 1974) (nonparty lacked standing to compel transfer of venue via mandamus). We have no occasion to assess whether our conclusion might be different if petitioners had substantiated their allegations that they attempted to join the suit below and had demonstrated that the district court improperly denied their request. *Cf. Alt. Research & Dev. Found. v. Veneman*, 262 F.3d 406, 411 (D.C. Cir. 2001) (per curiam) (suggesting that non-party might have standing to appeal a stipulated dismissal where intervention is improperly denied).

Amicus argues that petitioners can establish standing based on their general interest in the lawsuit, citing *Aurelius Capital Partners v. Republic of Argentina*, 584 F.3d 120 (2d Cir. 2009). In

Aurelius Capital, the Second Circuit determined that a nonparty with an "interest affected by the district court's judgment" had standing to appeal the judgment. *Id.* at 127-29. But the nonparty in *Aurelius Capital* had a direct property interest in certain funds deemed subject to attachment and execution by the lower court's order. *Id.* at 128. Even if that sort of direct property interest would justify non-party standing, petitioners' generalized "interest in the lawsuit challenging SMU procedures" does not suffice. Amicus Br. 38.

IV.

The remaining issue concerns the manner in which filing fees should be collected from petitioner Bruce. Under the federal IFP statute as amended by the PLRA, prisoners granted IFP status must make an initial partial payment at the time of filing followed by monthly installments until they pay the full fees. Section 1915(b) sets out the payment structure as follows:

> (b)(1) Notwithstanding subsection (a) [which encompasses non-prisoner litigants], 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.

Pinson moved to stay the collection of the monthly installments due in this case until he fulfilled his obligation to pay the filing fees he owed in other cases. That issue is moot as to Pinson in light of our conclusion that he may not proceed IFP. But we must still decide the issue on behalf of Bruce, who joined Pinson's motion and to whom we have granted IFP status. *See supra* Part II.

The courts of appeals are divided concerning the manner in which the PLRA calls for collection of installment payments from prisoners who simultaneously owe filing fees in multiple cases. The Second and Fourth Circuits interpret § 1915(b) to cap the monthly exaction of fees at twenty percent of a prisoner's monthly income, regardless of the number of cases for which he owes filing fees. *Torres v. O'Quinn*, 612 F.3d 237, 252 (4th Cir. 2010); *Whitfield v. Scully*, 241 F.3d 264, 277 (2d Cir. 2001). Under that "per prisoner" cap, a prisoner would satisfy his obligations sequentially, first fully satisfying his obligation for his earliest case before moving on to the next one, at no time making any

payment that would take his cumulative payments for that month beyond an overarching twenty-percent ceiling. By contrast, the Fifth, Seventh, Eighth, and Tenth Circuits have held that § 1915(b) requires a prisoner to make a separate installment payment for *each* filing fee incurred as long as no *individual* payment exceeds twenty percent of his monthly income. *Christensen v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x 821, 833 (10th Cir. 2010); *Atchison v. Collins*, 288 F.3d 177, 180 (5th Cir. 2002); *Lefkowitz v. Citi-Equity Grp.*, 146 F.3d 609, 612 (8th Cir. 1998); *Newlin v. Helman*, 123 F.3d 429, 436 (7th Cir. 1997), *overruled in part on other grounds by Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000), *and Walker v. O'Brien*, 216 F.3d 626 (7th Cir. 2000). Under that "per case" cap, a prisoner simultaneously makes payments towards satisfaction of all of his existing obligations.

This court, contrary to amicus's contention, has yet to choose between those approaches. Amicus errs in reading *Tucker v. Branker*, 142 F.3d 1294 (D.C. Cir. 1998), to have adopted a per prisoner cap. In that case, a North Carolina inmate challenged the PLRA's filing fee requirement, arguing that it denied him "due process of law by forcing him to choose between filing a lawsuit and being able to buy the necessities of life." *Id.* at 1298. In rejecting Tucker's challenge, we observed that "the payment requirement of the PLRA never exacts more than 20% of an indigent prisoner's assets or income." *Id.* That statement did not adopt a per-prisoner cap. *Tucker* involved an as-applied challenge to the PLRA by a prisoner who had filed one suit and thus owed a single twenty-percent installment each month. *Id.* Unsurprisingly, the decision at no point mentions or

contemplates the possibility of multiple simultaneous suits. In context, the observation relied on by amicus is best read to explain that the PLRA's payment structure "never exacts more than 20%" of a prisoner's monthly income for a given suit. *See id.* at 1297-98. And insofar as the statement could be understood to speak to a multiple-suit scenario not presented by the case, it would constitute non-binding dicta. *See Torres*, 612 F.3d at 242 n.3 (referring to the statement from *Tucker* as dicta).

Considering the issue afresh, we conclude that the per-case approach adopted by the Fifth, Seventh, Eighth, and Tenth Circuits is the better understanding of the statute. We begin with the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). Taken as a whole, the language and operation of § 1915 indicate that its provisions apply *to each action or appeal* filed by a prisoner; and subsection (b)(2), governing the payment of fees in installments, is no exception. *See Torres*, 612 F.3d at 256 (Niemeyer, J., dissenting).

Subsection (b)(1) of § 1915 addresses the threshold obligation to make an initial partial payment. The provision instructs that, "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall . . . collect, as a partial payment of any court fees required by law, an initial partial filing fee . . . ." 28 U.S.C. § 1915(b)(1). The plain text of the provision calls for assessment of the initial partial filing fee *each time* a

prisoner "brings a civil action or files an appeal." *Id.* Amicus acknowledges that the initial partial filing fee accrues in each case, regardless of the number of suits initiated.

Subsection (b)(2), the immediately ensuing provision, then states that, "*[a]fter 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." 28 U.S.C. § 1915(b)(2) (emphasis added). Because the initial partial filing fee imposed in subsection (b)(1) acts as the "triggering condition" for the monthly installments required by subsection (b)(2), the two provisions should be read in tandem. *Torres*, 612 F.3d at 256 (Niemeyer, J., dissenting). Given that the initial fee required by subsection (b)(1) applies on a per-case basis, it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis. *See id.* at 256-57.

The remainder of 28 U.S.C. § 1915 fortifies that per-case understanding. Subsection (a)(2), for example, states that 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 . . . shall submit a . . . trust fund account statement . . . for the 6-month period immediately preceding the filing of the complaint or the notice of appeal." *Id.* § 1915(a)(2) (emphasis added). Subsection (e)(2) provides that, "[n]otwithstanding 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" the case is defective. *Id.* § 1915(e)(2) (emphasis added). Subsection (f)(1) allows a court to render judgment for costs "at the conclusion of *the suit or action*." *Id.* §

1915(f)(1) (emphasis added). Interpreting subsection (b)(2) to dictate the amount a prisoner may be required to pay each month for all his cases *in toto* would be incongruous with the rest of the statute.

Amicus responds that § 1915(b)(1) terms the initial partial filing fee payment a "payment of *any* court fees required by law." And because "any" means "any and all," amicus contends, § 1915(b)(2) contemplates taking no more than twenty percent from an inmate's monthly income as payment for "all" court fees owed in all cases. Subsection (b)(1)'s reference to "any" court fees, however, must be read in context: when a prisoner "brings a civil action or files an appeal," he must pay an initial filing fee and monthly installments thereafter as payment of any (and all) court fees *required for that action or appeal*. *Id.* § 1915(b)(1); *see Torres*, 612 F.3d at 258 (Niemeyer, J., dissenting). A straightforward reading of § 1915 thus indicates that both the initial payment required by subsection (b)(1) and the monthly installments required by subsection (b)(2) apply on a per-case basis. Nothing in the statute suggests that a second or third action should be treated any differently than the first.

Amicus urges us to adopt the per-prisoner approach to avoid unconstitutionally constraining a prisoner's access to the courts. But the PLRA's safety-valve provision, § 1915(b)(4), separately serves that function. Under that provision, "[i]n 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." Moreover, § 1915(b)(2) calls for collection of the required monthly installments only if the amount in

a prisoner's account exceeds $10. 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 (provided of course that he faces no bar against proceeding IFP altogether by virtue of having accumulated three strikes). And because prison officials are constitutionally required to afford inmates "'adequate food, clothing, shelter, and medical care,'" our adoption of the per-case approach will not force a prisoner "to choose between the necessities of life and his lawsuit." *Tucker*, 142 F.3d at 1298 (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)).

Finally, the per-case approach comports with the PLRA's basic object. 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." *In re Kissi*, 652 F.3d 39, 41 (D.C. Cir. 2011) (per curiam) (internal quotation marks omitted). Capping monthly withdrawals at twenty percent of an inmate's income, regardless of the number of suits filed, would diminish the deterrent effect of the PLRA once a prisoner files his first action. *See Newlin*, 123 F.3d at 436. And although some of the legislative history cited by amicus suggests a disinclination to impose excessive fees on a prisoner for filing a lawsuit, there is no indication of an intention to refrain from imposing the same, non-excessive payment structure each time a prisoner initiates an action. *See, e.g.*, 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (statement of S. Kyl) ("The filing fee is small enough not to deter a prisoner with a meritorious claim, yet large enough to deter frivolous claims and multiple filings.").

* * * * *

For the foregoing reasons, we deny Pinson's motion to proceed IFP and Bruce's motion to stay collection of fees. We also dismiss the mandamus petition with respect to the allegedly rejected filings. With respect to the challenge to the transfer order, Pinson has thirty days from the issuance of this opinion to pay the filing fee and proceed. The other petitioners, although permitted to proceed IFP, lack standing to challenge the transfer. The clerk's office therefore should collect the applicable fees from each petitioner in accordance with § 1915(b).

So ordered.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2013**

1:10-cv-00092-UNA

Filed On: August 5, 2014

Jeremy Pinson, et al.,
Appellants

v.

Charles E. Samuels, Jr., et al.,
Appellees

BEFORE: Garland, Chief Judge; Henderson, and, Srinivasan, Circuit Judges

ORDER

Upon consideration of the petition for writ of mandamus, the briefs of the parties, and the argument by counsel, it is, in accordance with the court's opinion issued herein this date,

ORDERED that the petition be dismissed for lack of standing as to Jeremy Brown, Antoine Bruce, Andrew Wesley Hobbs, and John Samuel Leigh. It is

FURTHER ORDERED Antoine Bruce and John Samuel Leigh's motions to proceed in forma pauperis be granted. It is

FURTHER ORDERED that Pinson and Bruce's motion to stay collection of fees be denied. It is

FURTHER ORDERED that Jeremy Pinson's motion to proceed in forma pauperis be denied; with respect to the challenge to the transfer order, Pinson has thirty days to pay the filing fee and proceed.

The Clerk is directed to collect the applicable fees from each petitioner, excluding Pinson, in accordance with § 1915(b).

The Clerk is further directed to transmit this order and the orders concerning collection of fees to petitioners by whatever means necessary to ensure receipt. Failure of petitioner Pinson to comply with this order will result in dismissal of the transfer petition for failure to prosecute. See D.C. Cir. Rule 38.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2013**

1:10-cv-00092-UNA

Filed On: August 5, 2014

Jeremy Pinson, et al.,
Appellants

v.

Charles E. Samuels, Jr., et al.,
Appellees

BEFORE: Garland, Chief Judge; Henderson, and, Srinivasan, Circuit Judges

ORDER

Upon consideration of the court's order filed August 5, 2014, directing the Clerk to collect the applicable fees from each petitioner other than Pinson in accordance with 28 U.S.C. § 1915(b), and the trust account report and the consent to collection of fees filed by petitioner Antoine Bruce, it is

ORDERED that pursuant to Bruce's consent to collection of fees, Bruce's custodian is directed to pay on Bruce's behalf the initial partial filing fee of $0.64, to be withheld from Bruce's trust fund account. See 28 U.S.C. § 1915(b)(1). The payment must be by check or money order made payable to Clerk, U.S. Court of Appeals for the District of Columbia Circuit.

Petitioner Bruce's custodian also is directed to collect and pay from Bruce's trust account monthly installments of 20 percent of the previous month's income credited to the account, until $112.50, Bruce's share of the $450 docketing fee, has been paid. See 28 U.S.C. § 1915(b)(2). Such payments must be made each month the amount in the account exceeds $10 and must be designated as made in payment of the filing fee for Case No. 10-5059. A copy of this order must accompany each remittance. In the event Bruce is transferred to another institution, the balance due must be collected and paid in installments to the Clerk by the custodian at Bruce's next institution. Bruce's custodian must notify the Clerk, U.S. Court of Appeals for the District of Columbia Circuit in the event Bruce is released from custody.

The Clerk is directed to send a copy of this order to Bruce by whatever means necessary to ensure receipt. The Clerk is further directed to send to Bruce's custodian a copy of this order and Bruce's consent to collection of fees.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Ken R. Meadows
Deputy Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**

1:10-cv-00092-UNA

Filed On: October 22, 2014

Jeremy Pinson, et al.,
Appellant

v.

Charles E. Samuels, Jr., et al.,
Appellees

ORDER

Upon consideration of appellants' petition for rehearing en banc, the brief of amicus curiae in support of the petition, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**

1:10-cv-00092-UNA

Filed On: October 22, 2014

Jeremy Pinson, et al.,
Appellants

v.

Charles E. Samuels, Jr., et al.,
Appellees

BEFORE: Garland, Chief Judge; Henderson and Srinivasan, Circuit Judges

ORDER

Upon consideration of petitioners' petition for rehearing, the brief of amicus curiae in support of the petition, and petitioner Pinson's motion to extend time to pay the filing fee, it is

ORDERED that the motion for extension be denied. It is

FURTHER ORDERED that the petition for rehearing be denied. It is

FURTHER ORDERED that the order filed August 5, 2014, be amended to reflect that Pinson must pay $90.00 (one-fifth of the filing fee) within thirty days of the date of the amended order to be allowed to proceed with his case. If Pinson pays the

$90.00, the remaining petitioners' fees will be reduced from $112.50 each to $90.00 each.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**

1:10-cv-00092-UNA

Filed On: October 22, 2014

Jeremy Pinson, et al.,
Appellants

v.

Charles E. Samuels, Jr., et al.,
Appellees

BEFORE: Garland, Chief Judge; Henderson and Srinivasan, Circuit Judges

AMENDED ORDER

Upon consideration of the petition for writ of mandamus, the briefs of the parties, and the argument by counsel, it is, in accordance with the court's opinion issued herein this date,

ORDERED that the petition be dismissed for lack of standing as to Jeremy Brown, Antoine Bruce, Andrew Wesley Hobbs, and John Samuel Leigh. It is

FURTHER ORDERED Antoine Bruce and John Samuel Leigh's motions to proceed in forma pauperis be granted. It is

FURTHER ORDERED that Pinson and Bruce's motion to stay collection of fees be denied. It is

FURTHER ORDERED that Pinson's motion to proceed in forma pauperis be denied; with respect

to the challenge to the transfer order, Pinson has thirty days to pay $90.00 (one-fifth of the filing fee), and proceed.

The Clerk is directed to collect the applicable fees from the other petitioners in accordance with § 1915(b).

The Clerk is further directed to transmit this order and the orders concerning collection of fees to petitioners by whatever means necessary to ensure receipt. Failure of petitioner Pinson to comply with this order will result in dismissal of the transfer petition for failure to prosecute. See D.C. Cir. Rule 38.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**
1:10-cv-00092-UNA
Filed On: November 21, 2014

Jeremy Pinson,
Appellant

v.

Charles E. Samuels, Jr., et al.,
Appellees

AMENDED ORDER

Upon consideration of the court's order filed August 5, 2014, directing the Clerk to collect the applicable fees from each petitioner other than Pinson in accordance with 28 U.S.C. § 1915(b), and the trust account report and the consent to collection of fees filed by petitioner Antoine Bruce, it is

ORDERED that pursuant to Bruce's consent to collection of fees, Bruce's custodian is directed to pay on Bruce's behalf the initial partial filing fee of $0.64, to be withheld from Bruce's trust fund account. See 28 U.S.C. § 1915(b)(1). The payment must be by check or money order made payable to Clerk, U.S. Court of Appeals for the District of Columbia Circuit.

Petitioner Bruce's custodian also is directed to collect and pay from Bruce's trust account monthly installments of 20 percent of the previous month's income credited to the account, until $90.00, Bruce's share of the $450 docketing fee, has been paid. See

28 U.S.C. § 1915(b)(2). Such payments must be made each month the amount in the account exceeds $10 and must be designated as made in payment of the filing fee for Case No. 10-5059. A copy of this order must accompany each remittance. In the event Bruce is transferred to another institution, the balance due must be collected and paid in installments to the Clerk by the custodian at Bruce's next institution. Bruce's custodian must notify the Clerk, U.S. Court of Appeals for the District of Columbia Circuit in the event Bruce is released from custody.

The Clerk is directed to send a copy of this order to Bruce by whatever means necessary to ensure receipt. The Clerk is further directed to send to Bruce's custodian a copy of this order and Bruce's consent to collection of fees.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5059 **September Term, 2014**

1:10-cv-00092-UNA

Filed On: November 21, 2014

Jeremy Pinson,
Appellant

v.

Charles E. Samuels, Jr., et al.,
Appellees

ORDER

In accordance with the court's order filed October 22, 1014, and it appearing that petitioner Jeremy Pinson has paid a filing fee of $90.00, it is

ORDERED that the orders filed August 5, 2014, assessing petitioners Jeremy Brown, Antoine Bruce, Andrew Wesley Hobbs, and John Samuel Leigh a filing fee of $112.50 apiece be amended to reflect that the filing fee assessment for these petitioners is now $90.00 apiece.

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Jennifer M. Clark
Deputy Clerk