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## To Exhaust or Not to Exhaust: The Prisoner Litigation Reform Act Requires Prisoners to Exhaust All Administrative Remedies before Filing Excessive Force Claims in Federal Court

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TO EXHAUST OR NOT TO EXHAUST?: THE PRISONER  
LITIGATION REFORM ACT REQUIRES PRISONERS TO  
EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE  
FILING EXCESSIVE FORCE CLAIMS IN FEDERAL COURT

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I. INTRODUCTION

A prisoner finishes his first serving of ice cream and demands another. Prison guards inform the prisoner they cannot permit a second serving. In response, the prisoner throws a tantrum, screaming and yelling. The guards, in an effort to quiet the prisoner and keep order in the prison, gather the prisoner’s arms behind him. The prisoner, still ranting and raving, resists the restraint by flinging his arms and legs in every direction and striking the guards. In doing so, the prisoner bumps his head, causing a lump and bruise. This sounds ridiculous – A grown man ranting and raving for a second serving of ice cream. Perhaps, but what is more ridiculous is what followed – a lawsuit against the prison guards claiming they exerted excessive force upon the prisoner. This situation is what Congress refers to as “frivolous prisoner litigation.”<sup>1</sup>

Because of situations like the one above, the federal courts experienced a dramatic increase in prisoner litigation. From 1980 to 1996, petitions filed by state and federal prisoners nearly tripled, from 23,230 to 68,235.<sup>2</sup> Yet, the courts dismissed 62% of these prisoners’ petitions and less than 2% of such petitions were adjudicated in favor of the prisoner.<sup>3</sup> Because of lack of legal merit, these prisoner lawsuits proved to be frivolous and extremely burdensome on the federal judiciary.<sup>4</sup> As a result, Congress was faced with the need to balance the prisoners’ right to

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<sup>1</sup>This is a fabricated story fashioned after the facts presented in *Lyell v. Schachle*, No. 1-95-0035, 1996 WL 391557, at \*1 (M.D. Tenn. Feb. 28, 1996).

<sup>2</sup>JOHN SCALIA, BUREAU OF JUST. STATISTICS, PRISONER PETITIONS IN THE FEDERAL COURTS, 1980-1996: FEDERAL JUSTICE STATISTICS PROGRAM, 1 (1974).

<sup>3</sup>*Id.*

<sup>4</sup>*See Lyell*, 1996 WL 391557, at \*1 (arguing cruel and unusual punishment arose out of a denial of a second serving of ice cream) (“this case is illustrative of what gives prisoner litigation a bad odor”); *Rudd v. Jones*, 879 F. Supp. 621, 622 (S.D. Miss. 1995) (claiming that courts are “drowning in frivolous prisoner complaints”); *Scher v. Purkett*, 758 F. Supp. 1316, 1316-17 (E.D. Mo. 1991), *aff’d*, 62 F.3d 1421 (8th Cir. 1995) (arguing a denial of shampoo and deodorant is a violation of a prisoners’ Eighth Amendment rights) (“Scher files these suits to harass the defendants and provide a source of amusement for himself.”); *Cotner v. Campbell*, 618 F. Supp. 1091, 1095 (E.D. Okla. 1985) *aff’d in part, rev’d in part sub nom Cotner v. Hopkins*, 795 F.2d 900 (10th Cir. 1986) (“the sheer volume of these prisoners’ cases causes extreme frustration and hardship”); Eugene J. Kuzinski, Note, *The End of the Prison Litigation Reform Act of 1995*, 29 RUTGERS L.J. 361, 361 (1998) (“the PLRA is a necessary Congressional measure designed to rectify serious problems surrounding the federal courts’ involvement with state prison inmates”); *see also* 141 CONG. REC. 26,548 (1995). Senator Dole mentions a number of prisoner claims that were apparently frivolous in nature, such as suits involving “insufficient storage locker space, a defective haircut by a prisoner barber, the failure of prison officials to invite a prisoner to a pizza party for a departing prison employee, and yes, being served chunky peanut butter instead of the creamy variety.” *Id.*

judicial inquiry, and the taxpayers' interest in reducing costs associated with these frivolous claims.<sup>5</sup>

To alleviate the burden of prisoners' claims on the federal courts, Congress amended the Civil Rights of Institutionalized Persons Act (hereinafter CRIPA)<sup>6</sup> in 1996.<sup>7</sup> The amended Act, now referred to as the Prisoner Litigation Reform Act (hereinafter PLRA),<sup>8</sup> places firmer limits on inmates' access to the courts.<sup>9</sup> Despite the PLRA and Congress' intention to reduce the burden of prisoner litigation on the federal court system, these limits created considerable litigation regarding the Act's application.<sup>10</sup> More specifically, the PLRA's requirement of administrative

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<sup>5</sup>141 CONG. REC. 26,449 (1995) (relying on the National Association of Attorneys General's estimations that frivolous prisoner litigation has cost the taxpayers close to \$81.3 million); 141 CONG. REC. 26,553 (1995) ("It is time to stop this ridiculous waste of the taxpayers' money. The huge costs imposed on State governments to defend against these meritless suits is another kind of crime committed against law-abiding citizens.").

<sup>6</sup>Pub. L. No. 96-247, 94 Stat. 349 (1980) (codified as amended at 42 U.S.C. § 1997 (1994 & Supp. V 1999)).

<sup>7</sup>Senator Dole, joined with Senators Hatch, Kyl, Abraham, Hutchison, Reid, Thurmond, Specter, Santorum, D'Amato, Gramm, and Bond, introduced the PLRA as amendments to the Civil Rights of Institutionalized Persons Act "to address the alarming explosion in the number of frivolous lawsuits filed by State and Federal prisoners." 141 CONG. REC. 26,548 (1995). Senator Dole noted that the overabundance of frivolous prisoner lawsuits "tie up the courts, waste valuable legal resources, and affect the quality of justice enjoyed by law-abiding citizens." *Id.*

<sup>8</sup>Congress amended the CRIPA in 1996 with a set of amendments known as the Prison Litigation Reform Act. Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321, 1321-66 (1996) (codified at 18 U.S.C. § 3626, 28 U.S.C. §§ 1915, 1932, 1346, 42 U.S.C. 1997 (1994 & Supp. V 1999)).

The applicable amendment regarding exhaustion of administrative remedies will be referred to as the PLRA or section 1997e(a) as codified in the United States Code. This section will be cited as 42 U.S.C. § 1997e(a) (1994 & Supp. V 1999)).

Throughout this Note, the CRIPA prior to the amendments will be referred to as the CRIPA. The relevant section prior to the amendments was designated as § 7(a) in the CRIPA. Hereinafter, citations to this CRIPA section will be omitted and the United States Code will be used to cite to the old version of § 1997e(a)(1) (cited as 42 U.S.C. § 1997e(a)(1) (1994)).

<sup>9</sup>*See* 28 U.S.C. § 1915(g); *Id.* at § 1932; *Id.* at § 1915A(b); 42 U.S.C. § 1997e(a). These limits include: (1) excluding lawsuits filed by prisoners who previously had three petitions dismissed as frivolous, malicious, or failing to state a cause of action; (2) annulling release credit earned by a prisoner because the prisoner filed a frivolous claim; (3) allowing sua sponte dismissals of any claims that fail to state a cause of action; and (4) requiring prisoners to exhaust administrative remedies regarding "prison conditions" before filing suit. *Id.*

<sup>10</sup>*See* *Booth v. Churner*, 121 S. Ct. 1819, 1825 (2001) (holding that under 42 U.S.C. § 1997e(a), a prisoner seeking only monetary damages must complete any prison administrative remedies even if the process does not make specific provisions for monetary relief); *Nussle v. Willette*, 224 F.3d 95, 106 (2d Cir. 2000), *cert. granted sub nom. Porter v. Nussle*, 532 U.S. 1065 (2001) (holding that section 1997e(a)'s requirement of exhaustion of administrative remedies does not apply to claims of excessive force); *Smith v. Zachary*, 255 F.3d 446, 452 (7th Cir. 2001) (holding that section 1997e(a) states that administrative remedies must be exhausted before filing suit in court claiming excessive force).

exhaustion in 42 U.S.C. § 1997e(a) caused particular problems for the courts regarding prisoners' excessive force claims brought under the Eighth Amendment.<sup>11</sup>

Section 1997e(a) provides that "no action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."<sup>12</sup> The conflict regarding excessive force claims centers on the statutory phrase "prison conditions."<sup>13</sup> As a result, an intense dispute among the circuits surfaced regarding whether excessive force claims made by inmates are "prison conditions" under 1997e(a), ultimately requiring prisoners to exhaust administrative remedies before filing suit in federal court.<sup>14</sup>

This Note addresses this issue and recommends that excessive force claims be subject to the PLRA's exhaustion requirement, thereby requiring an inmate to exhaust administrative remedies before filing an excessive force suit in federal court. Requiring exhaustion for excessive force claims will help solve the problems associated with the overabundance of frivolous prisoner litigation and the federal judiciary's unnecessary interference into the nation's prison administrations. Moreover, the excessive force issue is in the forefront because the Supreme Court granted certiorari in *Porter v. Nussle*,<sup>15</sup> a case dealing exclusively with this issue. The lower court, in *Nussle v. Willette*,<sup>16</sup> allowed an inmate plaintiff's excessive force claim even though the plaintiff failed to exhaust administrative remedies.<sup>17</sup> This decision caused a kink in what seemed to be a consensus among the United States Appellate Courts' requiring exhaustion. Therefore, the Supreme Court's decision in *Porter* may provide the possible conclusion to a debate that began in the courts with the PLRA.

Part II of this Note begins by identifying the amendments of the PLRA, as well as the justifications for these amendments. Part III illustrates the split among the circuits regarding the applicability of excessive force claims to the exhaustion requirement. The discussion begins at Part IV, which asserts that the exhaustion requirement includes claims of excessive force. In making this determination, Part IV defines the phrase "prison conditions" and discusses the applicability of an excessive force claim to the PLRA's exhaustion requirement. Next, this Part

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<sup>11</sup> Compare *Nussle*, 224 F.3d at 106, *Baskerville v. Goord*, No. 97 Civ. 6413, 1998 WL 292421, at \*8 (S.D.N.Y. Nov. 5, 1998), *White v. Fauver*, 19 F. Supp. 2d 305, 316 (D.N.J. 1998), and *Johnson v. O'Malley*, No. 96 Civ. 6598, 1998 WL 292421, at \*3 (N.D. Ill. May 19, 1998) (finding exhaustion required), with *Smith*, 255 F.3d at 452, *Higginbottom v. Carter*, 223 F.3d 1259, 1261 (11th Cir. 2000), *Booth v. Churner*, 206 F.3d 289, 298 (3d Cir. 2000), *aff'd on other grounds*, 532 U.S. 731 (2001), *Freeman v. Francis*, 196 F.3d 641, 644 (6th Cir. 1999), *Wendell v. Asher*, 162 F.3d 887, 891 (5th Cir. 1998), *Garrett v. Hawk*, 127 F.3d 1263, 1265 (10th Cir. 1997), and *Beeson v. Fishkill Corr. Facility*, 28 F. Supp. 2d 884, 889 (S.D.N.Y. 1998) (finding exhaustion required).

<sup>12</sup>42 U.S.C. § 1997e(a) (1994 & Supp. V 2000).

<sup>13</sup>*See supra* note 11.

<sup>14</sup>*See id.*

<sup>15</sup>532 U.S. 1065 (2001).

<sup>16</sup>224 F.3d 95, 106 (2d Cir. 2000).

<sup>17</sup>*Id.*

proposes that the purpose and legislative history of the PLRA support a conclusion that excessive force claims are encompassed by the exhaustion requirement. Part IV continues with a discussion of Supreme Court cases, which confirm that the PLRA's exhaustion requirement includes claims of excessive force. Finally, this Part contends that the most efficient and effective process for the prisoner, as well as for the prison systems and federal judiciary, is to require exhaustion of excessive force claims. This Note concludes that requiring exhaustion of excessive force claims is the appropriate solution to the serious problems that plague the federal court system and the nation's prison administrations. Therefore, the Supreme Court should reverse the Second Circuit's decision in *Nussle v. Willette*, and hold that excessive force claims are "prison conditions," and therefore, subject to the exhaustion requirement of section 1997e(a).

## II. THE LEGISLATIVE HISTORY OF THE PRISONER LITIGATION REFORM ACT

Following the enactment of the CRIPA in 1980, federal courts encountered massive numbers of frivolous lawsuits, which proved greatly burdensome on the federal judiciary.<sup>18</sup> Additionally, these lawsuits led to substantial legal costs associated with taxpayer dollars.<sup>19</sup> Moreover, the federal judiciary was interfering tremendously with the orderly administration of the nation's prisons.<sup>20</sup> To remedy these serious concerns, Congress proposed amendments to the CRIPA, the Prisoner Litigation Reform Act of 1995, which was signed into law by President Clinton on April 26, 1996.<sup>21</sup>

### A. *The Need for the Prisoner Litigation Reform Act*

From 1980 to 1996, federal courts experienced an alarming increase in prisoner litigation. Within 16 years, petitions filed by prisoners swelled by nearly 300%, from 23,230 to 68,235.<sup>22</sup> Specifically, in 1994, inmates filed over 39,000 lawsuits, an alarming 15% rise in suits filed the previous year.<sup>23</sup> More astonishingly, the greater part of these suits completely lacked legal merit.<sup>24</sup> In 1994, nearly "94.7% of the lawsuits were dismissed before the pre-trial phase, and only a scant 3.1% have enough validity to reach trial."<sup>25</sup>

The increase in the number of suits, 95% of which proved to be meritless, was a major concern for all involved, even the prisoners.<sup>26</sup> These concerns regarding

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<sup>18</sup>See *supra* note 4, and accompanying text.

<sup>19</sup>See *supra* note 5, and accompanying text.

<sup>20</sup>See 141 CONG. REC. 35,980 (1995); 141 CONG. REC. 26,554 (1995); 141 CONG. REC. 26,448 (1995).

<sup>21</sup>See *supra* note 8, and accompanying text.

<sup>22</sup>SCALIA, *supra* note 2.

<sup>23</sup>141 CONG. REC. 26,548 (1995).

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

<sup>26</sup>*Id.* at 26,548, 26,553. Senator Dole, along with eleven other Senators, introduced the PLRA to curb the amount of frivolous lawsuits filed by prisoners. Dole also presented a letter

frivolous lawsuits were not based solely on statistics. Concerns also arose after the public became aware of specific examples of outlandish suits filed by prisoners.<sup>27</sup> Senator Robert Dole noted that frivolous lawsuits involved such grievances as: providing insufficient locker space, giving a defective haircut, not inviting an inmate to a pizza party, and even being served chunky peanut butter instead of creamy.<sup>28</sup> Senator Orrin Hatch also pointed out some noteworthy examples. One inmate filed a frivolous suit because the prison issued Converse shoes, rather than the more stylish Reebok or L.A. Gear shoes.<sup>29</sup> Another case involved an inmate who deliberately flooded his cell, and then sued the prison officials who cleaned up the flood for getting his Pinochle cards wet.<sup>30</sup>

Congress was not alone in its concern; the federal courts also commented on frivolous prisoner litigation.<sup>31</sup> As explained earlier, in *Lyell v. Schachle*, the

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written by the National Association of Attorneys General thanking him for his efforts in introducing the PLRA. *Id.*

<sup>27</sup>In 1995, a number of articles were published regarding frivolous prisoner suits. *See* Sandra Ann Harris, *Prisoners' Lawsuits Swamp Federal Courts*, THE NEWS TRIBUNE, Oct. 26, 1996, at D10; *Prisoner Litigation Reform Act Clears Congress; Orrin Hatch*, GOV'T PRESS RELEASES (Fed. Document Clearing House, Inc., Washington D.C.) Apr. 26, 1996; Dennis C. Vacco et al., Letter to the Editor, *Free the Courts From Frivolous Prisoner Suits*, N.Y. TIMES, Mar. 3, 1995, at A26.

Additionally, prisoners filed frivolous suits all over the country. *See Lyell v. Schachle*, No. 1-95-0035, 1996 WL 391557 (M.D. Tenn. Feb. 28, 1996) (arguing cruel and unusual punishment arose out of a denial of a second serving of ice cream); *Jones v. Warden of the Statesville Corr. Ctr.*, 918 F. Supp. 1142 (N.D. Ill. 1995) (claiming male inmates should have the same rights as women inmates and should be allowed access to bras and panties); *Scher v. Purkett*, 758 F. Supp. 1316 (E.D. Mo. 1991), *aff'd*, 62 F.3d 1421 (8th Cir. 1995) (arguing a denial of shampoo and deodorant is a violation of a prisoners' Eighth Amendment rights); *Foy v. Dunleavy*, Civ. A. No. 87-4897, 1987 WL 28399 (E.D. Pa. Dec. 18, 1987) (complaining the prison's failure to repair the photocopier denies prisoners "access to the courts and a lawyer").

<sup>28</sup>141 CONG. REC. 26,548 (1995).

<sup>29</sup>*Id.* at 26,553.

<sup>30</sup>*Id.*

<sup>31</sup>*See Cleavinger v. Saxner*, 474 U.S. 193, 211 (1985) (Rehnquist, J., dissenting) ("with less to profitably occupy their time than potential litigants on the outside, and with a justified feeling that they have much to gain and virtually nothing to lose, prisoners appear to be far more prolific litigants than other groups in the population"); *Rudd v. Jones*, 879 F. Supp. 621, 622 (S.D. Miss. 1995) ("It is . . . clearly obvious that many inmates and their sometimes almost professional jailhouse writ writers have abused the process merely to go through the exercise, challenge the system again, or get a trip out of the penitentiary for a court hearing"); *Yocum v. Dixon*, 729 F. Supp. 616, 616 (C.D. Ill. 1990) ("This case illustrates the problem confronting a district court when a prisoner has too much free time and chooses to free that time by inundating the Court with frivolous pro se pleadings and motions."); *James v. Quinlan*, 886 F.2d 37, 41 n.5 (3d Cir. 1989) (quoting *Gabel v. Lynaugh*, 835 F.2d 124, 125 n.1 (5th Cir. 1988)) ("setting forth statistics that 'suggest that pro se civil rights litigation has become a recreational activity for state prisoners in our Circuit'"); *Cotner v. Campbell*, 618 F. Supp. 1091, 1095 (E.D. Okla. 1985) *aff'd in part, vacated in part sub nom Cotner v. Hopkins*, 795 F.2d 900 (10th Cir. 1986) ("These complaints are but further examples of [Cotner's] malicious intent to disrupt the courts and make others pay for his mistakes"); *Gast v. Daily*, 577 F. Supp. 14, 15 (E.D. Wis. 1984) ("it must be stressed that the Court is not a

prisoner-plaintiff filed a complaint because he was denied a second serving of ice cream.<sup>32</sup> Writing for the majority, Judge Higgins noted that the case was “illustrative of what gives prisoner litigation a bad odor.”<sup>33</sup> Judge Higgins went on to explain that the judicial system would be ridiculed if he put six law-abiding, taxpaying citizens in the jury box to hear an ice cream case.<sup>34</sup> Judge Higgins told the plaintiff to “grow up and do his time and take his punishment like a man.”<sup>35</sup>

*Scher v. Purkett*<sup>36</sup> is another example of the courts’ fury with prisoners filing frivolous lawsuits. In that case, a prisoner filed a complaint alleging that the deprivation of shampoo and deodorant is cruel and unusual punishment.<sup>37</sup> The prisoner alleged that he was denied “the minimal civilized measure of life’s necessities.”<sup>38</sup> The court found the prisoner filed suit to harass the defendants and to amuse himself.<sup>39</sup> Judge Limbaugh, not amused, responded, “[t]he Court is poised to demonstrate just how vexed it has become with malcontent inmates who fill their idle time, and the Court’s precious time, by filing § 1983 complaints about the petty deprivations inherent in prison life.”<sup>40</sup>

Some inmates are notorious for the number of frivolous lawsuits they have filed during their incarceration.<sup>41</sup> In *Scher*, the court listed twenty cases filed by the prisoner, and called him “a frequent filer of prisoner civil rights suits.”<sup>42</sup> Judge Limbaugh responded to Scher’s 21st complaint by criticizing his malicious use of the judicial system and stripping Scher of his ability to file any more suits.<sup>43</sup>

The most notorious prisoner-plaintiff, however, would have to be the “Reverend” Clovis Carl Green, Jr., who has filed over 700 lawsuits.<sup>44</sup> One judge sarcastically

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correspondence school for creative writing”); *Franklin v. Oregon*, 563 F. Supp. 1310, 1316-17 (D. Or. 1983), *aff’d in part, rev’d in part sub nom.*, *Franklin v. Murphy*, 745 F.2d 1221 (9th Cir. 1984) (“True to his calling, Franklin has filed a civil rights complaint in this court every time somebody does something he does not like.”).

<sup>32</sup>*Lyell*, No. 1-95-0035, 1996 WL 391557, at \*1.

<sup>33</sup>*Id.*

<sup>34</sup>*Id.*

<sup>35</sup>*Id.*

<sup>36</sup>*Scher v. Purkett*, 758 F. Supp. 1316, 1317 (E.D. Mo. 1991), *aff’d*, 62 F.3d 1421 (8th Cir. 1986).

<sup>37</sup>*Id.* at 1316.

<sup>38</sup>*Id.*

<sup>39</sup>*Id.* at 1317.

<sup>40</sup>*Scher*, 758 F. Supp. at 1317.

<sup>41</sup>Harry Franklin is an inmate notorious for filing frivolous lawsuits. See *Franklin v. Oregon*, 563 F. Supp. 1310, 1316 (D. Or. 1983), *aff’d in part, rev’d in part sub nom.*, *Franklin v. Murphy*, 745 F.2d 1221 (9th Cir. 1984) (stating “only the finality of death,” either the Judge’s or Franklins’, would end the Judge’s torment of “the Harry Franklin saga”).

<sup>42</sup>*Scher*, 758 F. Supp. at 1317.

<sup>43</sup>*Id.*

<sup>44</sup>For a list of over 500 suits filed by Green within only seven years see *Green v. Camper*, 477 F. Supp. 758, 759-68 (W.D. Mo. 1979).

remarked that the *Guinness Book of World Records* does not contain a category for the most lawsuits filed by an individual; therefore, it is difficult to award Green the title.<sup>45</sup>

Not only do frivolous lawsuits infuriate the judges, but they waste courts' precious time and crowd the federal dockets. There is no question that prisoner litigation is an important segment of any docket.<sup>46</sup> Prisoner lawsuits represented nearly 25% of all civil suits filed in federal court.<sup>47</sup> In particular, in 1994 over 45% of all federal civil complaints filed in Arizona were state prisoners' complaints.<sup>48</sup> Hence, 20,000 Arizona inmates filed nearly the same amount of complaints as the 3.5 million citizens of Arizona.<sup>49</sup>

The volume of these cases frustrated and infuriated anyone who dealt with them.<sup>50</sup> Prison officials were limited by the funds appropriated to them, yet they were bombarded by the long lists of prisoner demands requesting such things as law libraries, legal clerks, sufficient prisoner access to libraries and courts, copying facilities, and mailing privileges.<sup>51</sup> Moreover, prison officials were constantly defending themselves against threats of frivolous lawsuits filed by inmates seeking revenge.<sup>52</sup> Court clerks were also affected by the enormous amount of frivolous prisoner claims.<sup>53</sup> These clerks filed and indexed hundreds of prisoner petitions, issued summons to all named parties, and shuffled and deciphered through the stacks of legal papers that followed.<sup>54</sup> After the court clerks completed their jobs, the deputy court clerks noted each and every document into a docket sheet, which was filed, indexed, and stored in facilities already subjected to overcrowding by the abundance of other lawsuits.<sup>55</sup> The torch was then passed to the state attorneys who struggled to understand the vague pleadings.<sup>56</sup> Finally, the judges, magistrates, and law clerks grappled with the nonconforming, and sometimes illegible, or even

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<sup>45</sup>Green v. Arnold, 512 F. Supp. 650, 651 n.4 (W.D. Tex. 1981).

<sup>46</sup>Cotner v. Campbell, 618 F. Supp. 1091, 1095 (E.D. Okla. 1985) *aff'd in part, vacated in part sub nom*, Cotner v. Hopkins, 795 F.2d 900 (10th Cir. 1986) (relying on *Federal Court Management Statistics*, p.129 (Admin. Office of the United States Courts, 1984)) (stating that the United States District Courts heard 31,307 prisoner claims, which is around 10% of all civil suits filed); 141 CONG. REC. 26,548 (stating that 45% of all civil cases filed in Arizona are prisoner lawsuits); *Id.* at 26,543 (stating that 22% of all civil cases filed in Utah are prisoner lawsuits); *see also* HARRIS, *supra* note 27, at D10; VACCO, *supra* note 27, at A26.

<sup>47</sup>141 CONG. REC. 14,572 (1995).

<sup>48</sup>141 CONG. REC. 26,548 (1995).

<sup>49</sup>*Id.*

<sup>50</sup>*See Cotner*, 618 F. Supp. at 1095.

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

<sup>53</sup>*Id.*

<sup>54</sup>*See Cotner*, 618 F. Supp. at 1095-96.

<sup>55</sup>*Id.* at 1096.

<sup>56</sup>*Id.*

incomprehensible pleadings of the prisoners.<sup>57</sup> The time spent completing these judicial tasks was overly burdensome upon the courts that serve to provide justice not only for the prisoners, but also for other citizens of the United States.<sup>58</sup>

Along with exploiting the federal docket, defending frivolous lawsuits wasted society's tax dollars. For instance, a lawsuit filed by a prisoner alleging the right to practice martial arts in prison had an estimated systemwide cost of \$28,000.<sup>59</sup> More astonishing was a case where the prisoner claimed a violation of constitutional rights because he did not receive five free stamped envelopes.<sup>60</sup> This suit cost the system \$151,000.<sup>61</sup> The prisoners did not pay one penny for either of these California lawsuits.<sup>62</sup> These bills were footed by the law-abiding, taxpaying citizens of California.<sup>63</sup>

Thirty-three states have estimated that civil rights suits filed by prisoners cost these states combined at least \$54.5 million each year.<sup>64</sup> Using this figure, experts have estimated that civil rights suits cost the fifty states, collectively, \$81.3 million annually.<sup>65</sup> This means that the citizens of the United States are dishing out over \$81 million dollars to pay for prisoner lawsuits that, 95% of the time, are found meritless.<sup>66</sup> Filing frivolous lawsuits is just another type of crime prisoners commit against the public. As Senator Hatch stated: "these prisoners are victimizing society twice – first when they commit the crime that put them in prison, and second when they waste our hard-earned tax dollars."<sup>67</sup>

When Congress enacted the PLRA, it was not only concerned with frivolous lawsuits, wasting of taxpayers' dollars, and crowding of dockets. Congress also intended to curtail the federal judiciary's micromanagement of state prison systems.<sup>68</sup> By rendering constant decisions regarding conditions of confinement, the federal

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<sup>57</sup>*Id.*; see also *Rudd v. Jones*, 879 F. Supp. at 621, 623 (S.D. Miss. 1995). In this case, the court dismissed the prisoner's complaint because it "is a confusing, rambling petition that is barely coherent" and will not survive the proceedings of a trial. *Id.*

<sup>58</sup>*Cotner*, 618 F. Supp. at 1096.

<sup>59</sup>HARRIS, *supra* note 27, at D10.

<sup>60</sup>*Id.*

<sup>61</sup>*Id.*

<sup>62</sup>*Id.*

<sup>63</sup>HARRIS, *supra* note 27, at D10.

<sup>64</sup>141 CONG. REC. 38276 (1995); 141 CONG. REC. 26,553 (1995) (Letter by National Association of Attorneys General); 141 CONG. REC. 26,448-49 (1995).

<sup>65</sup>141 CONG. REC. 38276 (1995); 141 CONG. REC. 26,553 (1995) (Letter by National Association of Attorneys General); 141 CONG. REC. 18, 26449 (1995).

<sup>66</sup>141 CONG. REC. 38,276 (1995); 141 CONG. REC. 35,980 (1995); 141 CONG. REC. 26,553 (1995) (Letter by the National Association of Attorneys General); 141 CONG. REC. 26,449 (1995).

<sup>67</sup>141 CONG. REC. 26,553 (1995).

<sup>68</sup>141 CONG. REC. 35,980 (1995); 141 CONG. REC. 26,554 (1995); 141 CONG. REC. 26,448 (1995); see also *Kuzinski*, *supra* note 4, at 361.

judiciary was ordering the nation's prison systems to follow numerous guidelines.<sup>69</sup> Soon, there were so many judicial decrees that it was becoming virtually impossible for the prison administrations to run the prisons without coming in contact with a judicial order.<sup>70</sup> As a result, the federal judiciary was literally running the prisons from the courtroom.<sup>71</sup> Oklahoma Attorney General Drew Edmondson summed it up in these words – “It’s time the federal government got out of the business of running state prison facilities on a day-to-day basis.”<sup>72</sup> Federal judges had literally seized control of the correctional institutions. In 1990, over 1,200 state prison systems were operating under the supervision of the federal judiciary in some form, and over forty states had some type of order overseeing aspects of prison administration.<sup>73</sup> For example, New York City was subjected to judicial restraint in nearly every aspect of prison conditions when it entered into a fifty-seven page consent decree in 1978.<sup>74</sup> The consent decree, expanding to an astonishing 1,500 pages in 18 years, modified something as simple as the number of forks, knives, spoons, and “spoodles” that every prison kitchen must supply.<sup>75</sup>

The number of frivolous lawsuits filed by prisoners, the overburdened federal dockets, the wasting of taxpayer dollars, and the micromanagement over prison systems were all concerns that plagued the federal legislatures, as well as the federal judiciary, prison systems, and citizens of the United States. As a result of these concerns, a number of Senators proposed several amendments to the CRIPA, and on April 26, 1996, the PLRA was enacted.<sup>76</sup>

#### B. *The Amended Language of 1997e(a)*

Congress enacted, and the President signed the Prisoner Litigation Reform Act in an effort to prevent frivolous lawsuits, overburden on courts, waste of taxpayer dollars, and judicial interference.<sup>77</sup> Four specific amendments created by the PLRA made it more difficult for prisoners to bring their complaints to federal courts.

First, absent a showing of imminent danger of serious physical harm, the Act bars suits by inmate-plaintiffs who had previously filed three petitions dismissed as

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<sup>69</sup>*Review & Outlook: Criminal Oversight*, WALL ST. J., June 10, 1996, at A18 (hereinafter *Criminal Insight*).

<sup>70</sup>*See id.*

<sup>71</sup>*See id.*

<sup>72</sup>Barbara Hoberock, *Prisoners’ Suit Against State is Sent Back to 10th Circuit*, TULSA WORLD, Oct. 8, 1996, at A7.

<sup>73</sup>*See Criminal Oversight*, *supra* note 69, at A18.

<sup>74</sup>*The Role of the U.S. Dep’t of Justice in Implementing the Prison Litigation Reform Act: Hearing Before the Comm. on the Judiciary U.S. Senate*, 104th Cong. 55-56 (1997) (statement of Laura A. Chamberlain).

<sup>75</sup>*Id.*

<sup>76</sup>28 U.S.C. § 1915(g); *Id.* at § 1932; *Id.* at § 1915A(b); 42 U.S.C. § 1997e(a).

<sup>77</sup>*See generally Criminal Insight*, *supra* note 69.

frivolous, malicious, or a failure to state a cause of action.<sup>78</sup> Second, the Act revokes a prisoner's earned release credit if he files a frivolous claim.<sup>79</sup> Third, the Act allows *sua sponte* dismissals of any claim that fails to state a cause of action.<sup>80</sup> Finally, and most importantly, the Act amended section 1997e(a) to require prisoners to exhaust administrative remedies prior to bringing suits regarding "prison conditions" to federal court.<sup>81</sup>

Exhaustion of administrative remedies requires parties to avail themselves of all potential solutions within the appropriate agency before asking the court to make a decision "on an adverse administrative determination."<sup>82</sup> When enacting the PLRA, Congress required exhaustion because it precludes the federal judiciary from intruding on a prison's administrative process until it has reached a solution.<sup>83</sup> Also, exhaustion allows prison administrations to apply their expertise and discretion, cultivate factual records, and perhaps, settle prisoner conflicts without judicial involvement.<sup>84</sup>

Keeping these attributes of exhaustion in mind, Congress made three significant changes to the exhaustion requirement. First, section 1997e(a) now *requires* a prisoner to exhaust administrative remedies before filing suit in federal court, whereas, prior to the PLRA, the federal judiciary used its discretion in applying the

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<sup>78</sup>28 U.S.C. § 1915(g). Section 1915(g) was more commonly known as "three strikes rule." In addition to an amendment that requires all inmates to pay the court's filing fee, section 1915(g) was created to deter prisoners from repeatedly filing frivolous complaints. Joseph T. Lukens, *The Prison Litigation Reform Act: Three Strikes and You're Out of Court – It May Be Effective, But is it Constitutional?*, 70 TEMP. L. REV. 471, 471 (1997).

Prior to the enactment of the PLRA, federal courts were extremely concerned by the amount of frivolous litigation filed by specific prisoners. Recall the *Scher* case in which Judge Limbaugh announced his disapproval with "frequent filer[s] of prisoner civil rights suits." *Scher v. Purkett*, 758 F. Supp. at 1316, 1316-17 (E.D. Mo. 1991), *aff'd*, 62 F.3d 1421 (8th Cir. 1995).

<sup>79</sup>28 U.S.C. § 1932.

<sup>80</sup>28 U.S.C. § 1915(b).

<sup>81</sup>42 U.S.C. § 1997e(a) (1994 & Supp. V 1999). Section 1997e (a) states "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." *Id.*

<sup>82</sup>5 JACOB A. STEIN ET AL., ADMINISTRATIVE LAW § 49.01, at 49-3 (2001); *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938) ("No one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.").

<sup>83</sup>*See* *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992) (suggesting that agencies should have the chance to correct disputes before the courts take over); *McKart v. United States*, 395 U.S. 185, 193 (1969) ("A primary purpose [of the exhaustion requirement] is, of course, the avoidance of premature interruption of the administrative process."); *accord* 141 CONG. REC. 26,554 (1995) ("In many jurisdictions . . . judicial orders entered under Federal law have effectively turned control of the prison systems away from elected officials accountable to the taxpayer, and over to the courts.").

<sup>84</sup>*See* *McKart*, 395 U.S. at 194; STEIN ET AL., *supra* note 82, at 49-3.

exhaustion requirement.<sup>85</sup> The second change requires exhaustion of *all* federal claims.<sup>86</sup> Prior to the enactment of the PLRA, section 1997e(a) applied only to actions brought pursuant to 42 U.S.C. § 1983.<sup>87</sup> After enactment, however, the exhaustion requirement applied to “all other Federal laws.”<sup>88</sup> In enacting this change, Congress sought to deter all frivolous lawsuits, not just those filed under section 1983.<sup>89</sup> The third change limited the scope of section 1997e(a) by only requiring exhaustion when prisoners’ brought actions “with respect to prison conditions.”<sup>90</sup> Because Congress failed to define “prison conditions” in section 1997e, conflict and confusion have arisen regarding the applicability of section 1997e(a) to excessive force actions.<sup>91</sup>

### III. THE CONFLICT AMONG THE FEDERAL COURTS

Congress failed to define the phrase “prison conditions” in section 1997e(a). As a result, the circuits are split as to whether excessive force claims are subject to the exhaustion requirement.<sup>92</sup> Because the term “prison conditions” is only defined in 18

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<sup>85</sup>Compare 42 U.S.C. § 1997e (a) (1994 & Supp. V 1999) with 42 U.S.C. § 1997e(a)(1) (1994). In general, courts do not require plaintiffs to exhaust administrative remedies prior to filing a civil suit in federal court. See *Patsy v. Bd. of Regents of Fla.*, 457 U.S. 496, 507-08 (1982). However, because prisoner-plaintiffs are different than law-abiding citizens, the PLRA requires prisoners to exhaust administrative remedies before entering court. See *id.*

<sup>86</sup>42 U.S.C. § 1997e(a) (1994 & Supp. V 1999).

<sup>87</sup>42 U.S.C. § 1997e(a)(1) (1994). Section 1997e(a)(1) states:

Subject to the provisions of paragraph (2), in any action brought pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. §1983) by an adult convicted of a crime confined in any jail, prison, or other correctional facility, the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not to exceed ninety days in order to require exhaustion of such plain, speedy, and effective administrative remedies as are available.

*Id.*

<sup>88</sup>42 U.S.C. § 1997e(a) (1994 & Supp. V 1999).

<sup>89</sup>141 CONG. REC. 14,573 (1995).

<sup>90</sup>Compare § 1997e(a) (1994 & Supp. V 2000) with § 1997e(a)(1) (1994).

<sup>91</sup>See *supra* note 11.

<sup>92</sup>Compare *Smith v. Zachary*, 255 F.3d 446, 452 (7th Cir. 2001), *Higginbottom v. Carter*, 223 F.3d 1259, 1260 (11th Cir. 2000), *Freeman v. Francis*, 196 F.3d 641, 644 (6th Cir. 1999), *Booth v. Churner*, 206 F.3d 289, 299 (3d Cir. 2000), *aff'd on other grounds*, 532 U.S. 731 (2001), *Wendell v. Asher*, 162 F.3d 887, 891 (5th Cir. 1998), and *Garrett v. Hawk*, 127 F.3d 1263, 1266 (10th Cir. 1997) (requiring exhaustion), with *Nussle v. Willette*, 224 F.3d 95, 106 (2d Cir. 2000), *cert. granted sub nom*, *Porter*, 532 U.S. at 1065 (finding exhaustion not required).

There are some notable district court cases also. Compare *Serrano v. Alvarado*, 169 F. Supp. 2d 14, 16 (D.P.R. 2001), *Castillo v. Buday*, 85 F. Supp. 2d 309, 312 (S.D.N.Y. 2000), *Johnson v. Garraghty*, 57 F. Supp. 2d 321, 326-28 (E.D. Va. 1999), *Beeson v. Fishkill Corr. Facility*, 28 F. Supp. 2d 884, 892 (S.D.N.Y. 1998), and *Moore v. Smith*, 18 F. Supp. 2d 1360, 1363 (N.D. Ga. 1998) (finding exhaustion required), with *Giannattasio v. Artuz*, No. 97 Civ. 7606, 2000 WL 335242, at \*11-\*12 (S.D.N.Y. Mar. 30, 2000), *Wright v. Dee*, 54 F. Supp. 2d

U.S.C. § 3626(g)(2), the Third, Sixth, Seventh, and Eleventh Circuits have used section 3626(g)(2) to categorize excessive force as a “prison condition.”<sup>93</sup> These Circuits have required prisoner litigants, claiming excessive force, to exhaust administrative remedies before filing suit in federal court.<sup>94</sup> The Second Circuit, however, disagrees with this approach, and uses the structure, purpose, and legislative history of the PLRA to find that excessive force is not a “prison condition.”<sup>95</sup> In *Nussle v. Willette*, the Second Circuit held that excessive force claims are not subject to the administrative exhaustion requirement.<sup>96</sup> In response to the apparent conflict among the circuits, the Supreme Court granted certiorari in the case *Porter v. Nussle*.<sup>97</sup>

#### A. *The Third, Sixth and Seventh Circuits Require Exhaustion*

##### 1. *Freeman v. Francis*

In *Freeman v. Francis*,<sup>98</sup> the plaintiff brought an action pursuant to 42 U.S.C. § 1983 claiming that he sustained a shoulder injury after an assault by a corrections officer.<sup>99</sup> The plaintiff argued that an excessive force claim was not subject to the exhaustion requirement because excessive force claims are not encompassed by the term “prison conditions” as used in section 1997e(a).<sup>100</sup> The Sixth Circuit rejected this argument and held that excessive force claims are subject to 1997e(a)’s exhaustion requirement.<sup>101</sup>

The Sixth Circuit gave three particular reasons for requiring exhaustion. First, the court indicated that “prison conditions” was not defined in section 1997e(a), but was defined in another section of the PLRA, 18 U.S.C. § 3626.<sup>102</sup> This section states

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199, 205-06 (S.D.N.Y. 1999), *Baskerville v. Goord*, No. 97 Civ. 6413, 1998 WL 778396, at \*2-\*5 (S.D.N.Y. Nov. 5, 1998), *White v. Fauver*, 19 F. Supp. 2d 305, 316 (D.N.J. 1998), *Johnson v. O’Malley*, No. 96 Civ. 6598, 1998 WL 292421, at \*3 (N.D. Ill. May 19, 1998), and *Morgan v. Ariz. Dep’t of Corr.*, 976 F. Supp. 892, 895-96 (D. Az. 1997) (finding exhaustion not required).

<sup>93</sup>*Smith*, 255 F.3d at 452; *Higginbottom*, 223 F.3d at 1260; *Freeman*, 196 F.3d at 644; *Booth*, 206 F.3d at 299.

<sup>94</sup>*See Smith*, 255 F.3d at 453; *Higginbottom*, 223 F.3d at 1261; *Freeman*, 196 F.3d at 644; *Booth*, 206 F.3d at 298. The Fifth and Tenth Circuits have held that excessive force actions are subject to the exhaustion requirements of section 1997e(a) without supplying in depth discussions behind their conclusions. *See Wendell*, 162 F.3d at 889, 891-92; *Garrett*, 127 F.3d at 1264-66.

<sup>95</sup>*Nussle*, 224 F.3d at 97-106.

<sup>96</sup>*Id.* at 106.

<sup>97</sup>*Porter v. Nussle*, 532 U.S. 1065 (2001).

<sup>98</sup>196 F.3d at 641.

<sup>99</sup>*Id.* at 642-43.

<sup>100</sup>*Id.* at 643.

<sup>101</sup>*Id.* at 644.

<sup>102</sup>*Freeman v. Francis*, 196 F.3d 641, 643-44 (6th Cir. 1999).

that claims regarding “prison conditions” are “any civil proceeding ... with respect to conditions of confinement or the effects of actions by government officials on the lives of confined persons.”<sup>103</sup> The Sixth Circuit applied the second part of the statute, the part following “or,” and found that claims of excessive force are “prison conditions” and thus, are subject to the exhaustion requirement of section 1997e(a).<sup>104</sup>

Next, the court articulated that the purpose of the PLRA also supports the conclusion that the phrase “prison conditions” includes excessive force claims.<sup>105</sup> The PLRA was enacted to help deter prisoners from filing frivolous lawsuits, as well as to reduce the federal courts’ micromanagement over prison systems.<sup>106</sup> The exhaustion requirement furthers these two purposes. First, exhaustion requires prisoners to submit their complaints to the prison’s administration.<sup>107</sup> This process helps eliminate the frivolous lawsuits before they have the possibility of reaching court.<sup>108</sup> Second, the exhaustion requirement gives prison administrations the power to render decisions regarding prisoner complaints.<sup>109</sup> This process gives a prison a chance to correct problems before a complaint reaches federal court.<sup>110</sup> Consequently, the power to run the prisons is reverted back to the prison administrations.

Third, the Sixth Circuit reasoned that a Supreme Court case, decided before the PLRA was enacted, already held that excessive force claims are included as “prison conditions.”<sup>111</sup> In *McCarthy v. Bronson*,<sup>112</sup> the Supreme Court held that the statutory language “prisoner petitions challenging conditions of confinement” includes both continuous practices and individual acts of wrongdoing, such as a claim of assault.<sup>113</sup> By using the Supreme Court’s decision in *McCarthy*, the Sixth Circuit concluded that if the “conditions of confinement” language was enough for *McCarthy* to encompass excessive force claims, then surely the definition of “prison conditions”—“effects of actions by government officials”—includes claims of excessive force.<sup>114</sup> The court reasoned that a plain reading of the definition of “prison conditions” more closely relates to individual acts of wrongdoing than “conditions of confinement.”<sup>115</sup> Therefore, if the term “conditions of confinement”

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<sup>103</sup> 42 U.S.C. § 3626(g)(2) (1994 & Supp. V 1999).

<sup>104</sup> *Freeman*, 196 F.3d at 644.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *See Freeman*, 196 F.3d at 644.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> 500 U.S. 136 (1991).

<sup>113</sup> *Id.* at 139-43.

<sup>114</sup> *See Freeman*, 196 F.3d at 644.

<sup>115</sup> *Id.*

includes individual acts of excessive force, then surely the term “prison conditions” encompasses excessive force claims.<sup>116</sup>

## 2. *Booth v. Churner*

In *Booth v. Churner*,<sup>117</sup> the Third Circuit followed the Sixth Circuit and held that excessive force claims are “prison conditions” as used in section 1997e(a).<sup>118</sup> Like the Sixth Circuit in *Freeman*, the Third Circuit relied on the statutory definition of “prison conditions” in section 3636 of the PLRA.<sup>119</sup> Also, like *Freeman*, the court relied on *McCarthy v. Bronson*.<sup>120</sup> *Booth*, however, also rebutted an argument that the Supreme Court concluded that the term “prison conditions” does not include excessive force claims.<sup>121</sup>

In *Booth*, the plaintiff argued that the court should follow the Supreme Court’s decisions in *Farmer v. Brennan*<sup>122</sup> and *Hudson v. McMillian*.<sup>123</sup> The plaintiff claimed that in these two cases, the Supreme Court treated “prison conditions” claims and excessive force claims differently, and if Congress intended to eliminate the distinction between “prison conditions” and excessive force claims it would have done so in the PLRA.<sup>124</sup> The Third Circuit found this argument flawed for a number of reasons. First, Congress made its intent clear regarding the definition of “prison conditions” in section 3626.<sup>125</sup> Therefore, applying the common law meaning of “conditions of confinement” is unnecessary and inappropriate.<sup>126</sup> Second, the Third Circuit argued that applying *Farmer* and *Hudson* is inappropriate because courts determine Congress’ intent in enacting the statute, not the intent of the Supreme Court in interpreting similar, but not identical terms.<sup>127</sup> For all these reasons, the Third Circuit in *Booth* concluded that claims of excessive force are encompassed by the term “prison conditions” and therefore, must be administratively exhausted.<sup>128</sup>

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<sup>116</sup>*Id.*

<sup>117</sup>*Booth v. Churner*, 206 F.3d 289, 290 (3d Cir. 2000), *aff’d on other grounds*, 532 U.S. 731 (2001).

<sup>118</sup>*Id.*

<sup>119</sup>*Id.* at 294-95.

<sup>120</sup>*Id.* at 295-96.

<sup>121</sup>*Id.* at 297-98.

<sup>122</sup>511 U.S. 825 (1994).

<sup>123</sup>503 U.S. 1 (1992).

<sup>124</sup>*Booth*, 206 F.3d at 297.

<sup>125</sup>*Id.*

<sup>126</sup>*Id.* at 297.

<sup>127</sup>*Id.*

<sup>128</sup>*Booth*, 206 F.3d at 290.

### 3. *Smith v. Zachary*

In *Smith v. Zachary*, the Seventh Circuit took a more defensive approach in reaching its conclusion that excessive force claims are included as “prison conditions.” In *Smith*, the plaintiff argued that since in section 1997e(a) the word “conditions” is plural, it does not include an individual event such as an assault.<sup>129</sup> The court quickly rebutted this claim by quoting the opening section of the United States Code: “[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise ... words importing the plural include the singular.”<sup>130</sup> The court also noted, “[g]iven that part of a prison guard’s job is to control inmates, the use of excessive force in achieving this end can be viewed as a management failure, not only as a random act of violence.”<sup>131</sup> Hence, the court concluded that claims of excessive force are encompassed by the term “prisons conditions” because the use of excessive force can be the result of an ongoing condition at the prison.<sup>132</sup>

The Seventh Circuit also rebutted the prisoners’ assertions by pointing out the positive attributes of the exhaustion requirement. First, the court noted that requiring excessive force claims to be administratively exhausted allows prisons to address problems internally, as well as to insure the prisoner’s safety more quickly.<sup>133</sup> Also, the court indicated that after a prisoner exhausts administrative remedies, the prisoner has a factual record to take with him if he chooses to file in federal court.<sup>134</sup> Finally, the court observed that the exhaustion requirement does not bar a prisoner from filing suit in federal court.<sup>135</sup> Instead, the exhaustion requirement only creates a necessary prerequisite.<sup>136</sup> For all these reasons, the court concluded that the exhaustion requirement could help prisoners, rather than hurt them.<sup>137</sup>

The Seventh Circuit made additional observations before rendering its final judgment. The court noticed that even though the Supreme Court in *Booth v. Churner* did not address the excessive force issue specifically, the Court required the prisoner’s claim of excessive force to be administratively exhausted.<sup>138</sup> The Seventh Circuit concluded that the Supreme Court, by dismissing the case prior to determining the issue of excessive force, implied that excessive force claims are subject to the exhaustion requirement.<sup>139</sup> Finally, the Seventh Circuit addressed the plaintiff’s suggestion that excessive force claims should be an exception to the

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<sup>129</sup>*Smith v. Zachary*, 255 F.3d 446, 448 (7th Cir. 2001).

<sup>130</sup>*Id.* at 449.

<sup>131</sup>*Id.*

<sup>132</sup>*Id.*

<sup>133</sup>*Smith*, 255 F.3d at 450-51.

<sup>134</sup>*Id.* at 451.

<sup>135</sup>*Id.*

<sup>136</sup>*Id.*

<sup>137</sup>*Smith*, 255 F.3d at 451.

<sup>138</sup>*Id.* at 452.

<sup>139</sup>*Id.*

exhaustion requirement.<sup>140</sup> The court quickly turned down this suggestion by stating “an exception for particularized instances of force directed at a specific inmate ... is a cumbersome test to apply.”<sup>141</sup> After making these final observations, the Seventh Circuit concluded that claims of excessive force are “prison conditions” and thus, must be administratively exhausted.<sup>142</sup>

### B. The Second Circuit Does Not Require Exhaustion

The Second Circuit, in *Nussle v. Willette*, put a kink in what seemed to be a consensus among the circuits. In *Nussle*, the plaintiff filed a lawsuit against two corrections officers alleging excessive use of physical force under the Eighth Amendment.<sup>143</sup> The Second Circuit held that the plaintiff’s excessive force claim was not subject to the exhaustion requirement of 1997e(a).<sup>144</sup>

The Second Circuit discussed five specific reasons for not requiring excessive force claims to be administratively exhausted. First, the court looked to the statutory text of section 1997e(a) to determine the meaning of the phrase “prison conditions.” Even though “prison conditions” is not defined anywhere in section 1997, the court stated that the text itself suggests that particular instances of excessive force are included as “prison conditions.”<sup>145</sup> “The use of the term prison conditions” in section 1997e(a) would appear to refer to “circumstances affecting everyone in the area affected by them, rather than ‘single or momentary matters,’ such as beatings or assaults, that are directed at particular individuals.”<sup>146</sup> The court reasoned that a claim of excessive force is a singular event directed at one prisoner, while the term “prison conditions” refers to ongoing practices that affect a number of prisoners.<sup>147</sup> Therefore, the Second Circuit concluded, excessive force claims are not encompassed by the term “prison conditions.”<sup>148</sup>

Second, the court refused to use section 3626 to define the phrase “prison conditions.” The court argued, “effects of actions by government officials on the lives of persons confined in prison,” is such an awkward phrase that ordinarily it would not be used to depict events of excessive force.<sup>149</sup> The court reasoned that no one would use this roundabout terminology to describe an altercation with a prison guard.<sup>150</sup> As a result, the Second Circuit concluded that by using this language,

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<sup>140</sup>*Id.* at 451.

<sup>141</sup>*Smith*, 255 F.3d at 451.

<sup>142</sup>*Id.* at 452.

<sup>143</sup>*Nussle v. Willette*, 224 F.3d 95, 97 (2d Cir. 2000), *cert. granted sub nom*, *Porter v. Nussle*, 532 U.S. 1065 (2001).

<sup>144</sup>*Id.* at 106.

<sup>145</sup>*Id.* at 101.

<sup>146</sup>*Id.*

<sup>147</sup>*Nussle*, 224 F.3d at 101.

<sup>148</sup>*Id.* at 105.

<sup>149</sup>*Id.* at 102.

<sup>150</sup>*Id.* at 103.

Congress demonstrated its intention that claims of excessive force are not included as “prison conditions.”<sup>151</sup>

Third, the Second Circuit articulated that the structure, purpose and legislative history of the PLRA suggest that excessive force claims are not subject to the exhaustion requirement of section 1997e(a). The court first suggested that the definition of “prison conditions” in section 3626 does not apply to section 1997e(a).<sup>152</sup> The court reasoned that Congress had different intentions in enacting these two provisions. By enacting section 3626, Congress was concerned with preventing courts from interfering with prison administrations.<sup>153</sup> On the other hand, by enacting section 1997e(a), Congress was concerned with the purpose of “filtering out frivolous suits administratively.”<sup>154</sup> Because the two statutes serve different purposes, Congress could not have intended to apply the same meaning of “prison conditions” to section 1997e(a).<sup>155</sup> Such an application, would promote an entirely different purpose than Congress intended for section 1997e(a).<sup>156</sup>

Fourth, the Second Circuit reasoned that “government officials,” as used in section 3626(g)(2), is more reasonably understood to apply to administrative officials, rather than corrections officers or prison employees.<sup>157</sup> The court maintained that the term “officials” refers to policymaking officials, and not employees, such as corrections officers.<sup>158</sup> The court explained that corrections officers have day-to-day contact with inmates, but have no authority to make administrative decisions.<sup>159</sup> Because corrections officers have no authority to make administrative decisions they are not “government officials.”<sup>160</sup> Therefore, the court determined, section 3626(g)(2)’s definition of “prison conditions” cannot apply when a prison guard commits an assault.<sup>161</sup>

Fifth, the Second Circuit relied on two Supreme Court cases that were decided prior to the enactment of the PLRA. In *Hudson v. McMillian*<sup>162</sup> and *Farmer v. Brennan*,<sup>163</sup> the Supreme Court created a distinction between excessive force claims and “conditions-of-confinement” claims. The Supreme Court reasoned,

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<sup>151</sup>*Nussle*, 244 F.3d at 103.

<sup>152</sup>*Id.*

<sup>153</sup>*Id.* at 103-04.

<sup>154</sup>*Id.* at 103.

<sup>155</sup>*Nussle*, 244 F.3d at 103-04.

<sup>156</sup>*Id.*

<sup>157</sup>*Id.* at 104-05.

<sup>158</sup>*Id.* at 104.

<sup>159</sup>*Nussle*, 244 F.3d at 104.

<sup>160</sup>*Id.*

<sup>161</sup>*Id.*

<sup>162</sup>503 U.S. 1, 9 (1992).

<sup>163</sup>511 U.S. 825, 835-36 (1994).

“contemporary standards of decency are violated” by a malicious use of force.<sup>164</sup> Whereas, “conditions of confinement” claims are only “deprivations denying the minimal civilized measures of life’s necessities.”<sup>165</sup> Hence, a less rigorous showing of injury is required for claims of excessive force, than for “conditions of confinement” claims.<sup>166</sup> The Second Circuit used the Supreme Court’s analysis and determined that the term “prison conditions” is substantially related to the term “conditions of confinement.”<sup>167</sup> Therefore, excessive force claims should not be defined as “prison conditions” and thus, should not be required to be administratively exhausted.<sup>168</sup>

Because the Second Circuit has refused to follow the Third, Fifth, Sixth, Seventh, Tenth and Eleventh Circuits in holding that excessive force claims are subject to the exhaustion requirement, the Supreme Court granted certiorari in *Porter v. Nussle*.<sup>169</sup> The Supreme Court’s decision in this case is likely to have a substantial effect not only on prisoners’ excessive force claims, but also on other similar and controversial prisoner claims, such as unlawful strip searches, sexual assault by prison guards, unconstitutional denials of medical care, unjustified punishment and retaliation, or even a failure to provide protection from assault committed by other prisoners.<sup>170</sup>

#### IV. THE EXHAUSTION REQUIREMENT INCLUDES EXCESSIVE FORCE CLAIMS

Prisoners claiming excessive force should be required to exhaust all administrative remedies for a couple of reasons. First, the plain meaning of the statute suggests an intent to include claims of excessive force in the exhaustion requirement. Although the term “prison conditions” is not defined in section 1997e(a), section 3626 of the PLRA provides a definition of “prison conditions” and this definition includes claims of excessive force. Additionally, the purpose and legislative history of 1997e(a) supports exhaustion of excessive force claims. Congress made the purposes of the PLRA clear: to reduce frivolous prisoner litigation, to prevent the federal judiciary from micromanaging prison systems, and to lessen the burden on the federal docket.<sup>171</sup> Requiring exhaustion for excessive force claims furthers these three purposes. Also, two Supreme Court decisions, *McCarthy v. Bronson* and *Booth v. Churner*, add to the view that the PLRA’s exhaustion requirement includes claims of excessive force. Moreover, requiring exhaustion of excessive force claims is the most efficient and effective process for prisoners as well as prison systems and the federal judiciary. For all these reasons,

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<sup>164</sup>*Hudson*, 503 U.S. at 9.

<sup>165</sup>*Id.*

<sup>166</sup>*Id.*

<sup>167</sup>*Nussle v. Willette*, 224 F.3d 95, 106 (2d Cir. 2000), *cert. granted sub nom*, *Porter v. Nussle*, 532 U.S. 1065 (2001).

<sup>168</sup>*Id.*

<sup>169</sup>*Porter v. Nussle*, 532 U.S. 1065 (2001).

<sup>170</sup>*See Beeson v. Fishkill Corr. Facility*, 28 F. Supp. 2d 884, 889 (S.D.N.Y. 1998).

<sup>171</sup>141 CONG. REC. 26, 548 (1995); 141 CONG. REC. 35,980 (1995); 141 CONG. REC. 26,554 (1995); 141 CONG. REC. 26,448 (1995).

prisoners claiming excessive force should be required to exhaust all administrative remedies before filing suit in federal court.

*A. The Definition of “Prison Conditions” Includes the Use of Excessive Force*

In applying section 3626(g)(2) to section 1997e(a), one can easily conclude that Congress intended to include excessive force claims as “prison conditions,” thereby requiring such claims to be administratively exhausted. First, excessive force claims are necessarily encompassed by the term “prison conditions.” Congress created roundabout phraseology—“effects of actions by government officials on the lives of persons confined in prisons”<sup>172</sup>—capturing an extensive variety of practices, such as the use of excessive force. Additionally, the compelling evidence of Congressional intent also supports the application of section 3626 to define the term “prison conditions” as used in section 1997e(a). There is no reason to believe that when Congress enacted the PLRA it meant the term “prison conditions” to mean one thing in section 3626 and to mean something totally different in the following section. Also, the similarities in the statutory language of sections 3626 and 1997 illustrate Congress’ intent to use section 3626 to define “prison conditions” as used in section 1997e(a). For these reasons, one can safely assume that the definition of “prison conditions” in section 3626(g)(2) necessarily defines the term “prison conditions” as used in section 1997e(a), and by doing so, requires excessive force claims to be administratively exhausted.

The phrase “action ... with respect to prison conditions”<sup>173</sup> is not defined anywhere in section 1997e(a). A definition of this phrase, however, is provided in 18 U.S.C. § 3626(g)(2), which was also enacted as part of the PLRA. Section 3626(g)(2) provides that the phrase:

“civil action with respect to prison conditions” means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison[.]<sup>174</sup>

According to the rule on statutory construction, when Congress uses the same term in two different places of the same statute, those terms should be interpreted to have similar meanings.<sup>175</sup> Accordingly, in order to determine if excessive force claims are subject to the exhaustion requirement of 1997e(a), one should follow the

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<sup>172</sup>18 U.S.C. § 3626(g)(2).

<sup>173</sup>42 U.S.C. § 1997e(a) (1994 & Supp. V. 1999).

<sup>174</sup>18 U.S.C. § 3626(g)(2).

<sup>175</sup>*Mertens v. Hewitt Assocs.*, 508 U.S. 248, 260 (1993) (“We certainly agree with petitioners that language used in one portion of a statute . . . should be deemed to have the same meaning as the same language used elsewhere in the statute.”); *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (quoting *Sorenson v. Sec’y of the Treasury*, 475 U.S. 851, 860 (1986)) (“The substantial relation between the two programs presents a classic case for application of the ‘normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.’”); *Baggett v. First Nat’l Bank of Gainesville*, 117 F.3d 1342, 1350 (11th Cir. 1997) (“Well-established canon of statutory construction [is] that words have the same meaning throughout a given statute.”).

rules governing statutory construction and look to section 3626(g)(2) to determine the meaning of “prison conditions.”<sup>176</sup>

By applying 3626(g)(2) to section 1997e(a), one can easily conclude that Congress intended to include excessive force claims as “prison conditions.” Courts have routinely separated section 3626(g)(2) into two prongs: (1) any action “with respect to the conditions of confinement;” or (2) “the effects of actions by government officials on the lives of persons confined in prison.”<sup>177</sup> As the Third Circuit in *Booth* pointed out, the “conditions of confinement” language includes complaints regarding “the environment in which the prisoners live, the physical conditions of that environment, and the nature of the services provided therein.”<sup>178</sup> Therefore, claims of excessive force do not “naturally fall into” the first prong of section 3626(g)(2).<sup>179</sup>

One can argue, however, that the second prong of 3626(g)(2) encompasses claims of excessive force. This prong defines “prison conditions” as “the effects of actions by government officials on the lives of persons confined in prison.”<sup>180</sup> The use of excessive force on a prisoner is an action by a government official: correction officers are governmental employees who run the day-to-day aspects of a prison, such as protecting prisoners from each other and controlling the order of the prison as a whole.<sup>181</sup> Therefore, a correction officer is a government official.<sup>182</sup> Moreover, the use of excessive force by a prison guard unavoidably has an effect on the life of a prisoner. As the court in *Booth* suggested, excessive force makes a prisoner’s life worse in the same way as intentionally denying “a prisoner inmate food, heating or medical attention.”<sup>183</sup> For these reasons, excessive force claims are necessarily encompassed by the term “prison conditions,” and as a result, must be administratively exhausted as required by section 1997e(a).

Despite the logic of this argument, the Second Circuit refused to accept that excessive force claims are defined by section 3626(g)(2), because “such awkward language would not, ordinarily, be used to describe such incidents.”<sup>184</sup> Specifically, the court cited Judge Noonan’s argument in *Booth* that when someone is assaulted, “no one on earth, educated or uneducated, would use such roundabout phraseology” as “effects of actions by government officials on the lives of persons confined in

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<sup>176</sup>*Booth v. Churner*, 206 F.3d 289, 297-98 (3d Cir. 2000), *aff’d on other grounds*, 532 U.S. 731 (2001); *Freeman v. Francis*, 196 F.3d 641, 644 (6th Cir. 1999).

<sup>177</sup>*See Smith v. Zachary*, 255 F.3d 446, 449 (7th Cir. 2001); *Booth*, 206 F.3d at 295.

<sup>178</sup>*Booth*, 206 F.3d at 294-95.

<sup>179</sup>*Id.*

<sup>180</sup>42 U.S.C. § 3626(g)(2).

<sup>181</sup>*See Smith*, 255 F.3d at 449; *Booth*, 206 F.3d at 295.

<sup>182</sup>*Booth*, 206 F.3d at 295.

<sup>183</sup>*Id.*

<sup>184</sup>*Nussle v. Willette*, 224 F.3d 95, 102 (2d Cir. 2000), *cert. granted sub nom*, *Porter v. Nussle*, 532 U.S. 1065 (2001).

prison” to express the nature of the assault.<sup>185</sup> This argument is impracticable and unsubstantiated. Judge’s Noonan’s argument works with all types of prisoner lawsuits, even the frivolous kind. When someone is served chunky peanut butter instead of creamy, no one would describe this situation as an “effect[] of action[] by government officials on the lives of persons confined in jail.”<sup>186</sup> Congress knew what it was doing when it used a general phrase to define “prison conditions.”<sup>187</sup> If Congress wanted to exclude acts of excessive force, it could have clarified its intent by creating a more precise description of “prison conditions.”<sup>188</sup> But Congress did not do that. Instead, Congress created a roundabout phrase that would encompass an extensive variety of practices, such as the use of excessive force.<sup>189</sup>

The Second Circuit also maintained that excessive force claims do not fall into the second category of section 3636(g)(2) because prison guards are not government officials.<sup>190</sup> The court defended its narrow interpretation of section 3626 by pointing to Congress’ primary purpose in enacting section 3626.<sup>191</sup> In enacting section 3626 of the PLRA, Congress sought to prevent the judiciary from interfering with the management of prison systems and to return to prison administrators the authority to make the day-to-day decisions.<sup>192</sup> Therefore, the court concluded, the term “government officials” as used in section 3626 only applies to high-ranking prison officials or “administrative and policymaking officials” and not “lower level government employees, such as corrections officers[.]”<sup>193</sup>

Once again, the Second Circuit mistakenly has taken a narrow approach regarding section 3626(g)(2). If Congress wanted to limit the application to administrative or policymaking officials, it would have done so by specifically limiting the provision to “policymaking officials,” as it did in 50 U.S.C. § 403-3(b)(5), or by limiting the provision to a “supervisory official,” as it did in 18 U.S.C. § 2705(a)(1)(B) and 42 U.S.C. § 2000aa-11(a)(4).<sup>194</sup> Congress, however, did not

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<sup>185</sup>*Id.* at 103 (quoting Judge Noonan in *Booth*, 206 F.3d at 302 (Noonan, J., concurring and dissenting)).

<sup>186</sup>*See* Brief for the United States as Amicus Curiae Supporting Petitioners at 23, *Porter v. Nussle*, 532 U.S. 1065 (2002) (No. 00-853).

<sup>187</sup>*Id.*

<sup>188</sup>*Id.*

<sup>189</sup>*Id.*

<sup>190</sup>*Nussle*, 224 F.3d at 104.

<sup>191</sup>*Id.*

<sup>192</sup>*Id.* at 103-04.

<sup>193</sup>*Id.* at 104.

<sup>194</sup>*See* 50 U.S.C. § 403-3(b)(5) (1994 & Supp. V 1999); 18 U.S.C. § 2705(a)(1)(B) (1994 & Supp. V 1999); 42 U.S.C. § 2000aa-11(a)(4) (1994 & Supp. V 1999).

50 U.S.C. § 403-3(b)(5) states:

The Director shall make available to the Council such staff as may be necessary to permit the Council to carry out its responsibilities under this subsection and shall take appropriate measures to ensure that the Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence. The Council shall also be

limit the provision by using the terms “policymaking officials” or “supervisory officials.” Instead, Congress broadened the provision by using the more general term “government officials.”<sup>195</sup> Therefore, the Second Circuit’s argument that section 3626(g)(2) does not apply to excessive force claims because corrections officers are not “government officials” is impracticable and unpersuasive.<sup>196</sup>

The compelling evidence of congressional intent also supports the application of section 3626 to define the term “prison conditions” as used in section 1997e(a). Because “prison conditions” is not defined in section 1997e(a), the close proximity of section 3626 to section 1997 in the PLRA supports the conclusion that the definition of “actions with respects to prison conditions” was intended to apply to section 1997e(a).<sup>197</sup> In the PLRA, section 3626 immediately precedes section 1997.<sup>198</sup> Accordingly, there is no reason to believe that when Congress enacted the PLRA, it meant the term “prison conditions” to mean one thing in section 3626 and to mean something totally different in the following section.<sup>199</sup>

Also, the similarities between sections 3626 and 1997 illustrate Congress’ intent to use section 3626 to define “prison conditions” as used in 1997e(a). Both sections were amended on the same day and as part of the same legislation.<sup>200</sup> Additionally,

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readily accessible to policymaking officials and other appropriate individuals not otherwise associated with the intelligence community.

*Id.*

18 U.S.C. § 2705(a)(1)(B) states:

[W]here an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

*Id.*

42 U.S.C. § 2000aa-11(a)(4) states:

[A] requirement that an application of a warrant to conduct a search governed by this title be approved by an attorney for the government, except that in an emergency situation the application may be approved by another appropriate supervisory official if within 24 hours of such emergency the appropriate United States Attorney is notified.

*Id.*

<sup>195</sup>See 18 U.S.C. § 3626(g)(2).

<sup>196</sup>The Supreme Court routinely referring to corrections officers as “officials” also supports this conclusion. See *McCarthy v. Bronson*, 500 U.S. 136, 138 (1991); *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992). Even more compelling is the fact that the Supreme Court has also referred to corrections officers as “government officials.” See *Procunier v. Navarette*, 434 U.S. 555, 558 n.2 (1978); *Crawford-El v. Britton*, 523 U.S. 574, 587 (1998).

<sup>197</sup>Brief for Petitioners at 21, *Porter v. Nussle*, 532 U.S. 1065 (2001) (No. 00-853).

<sup>198</sup>See Prisoner Litigation Reform Act of 1995, Pub. L. No. 104-134, 802-03, 110 Stat. 1321-66 (1996) (codified at 18 U.S.C. § 3626); Prisoner Litigation Reform Act of 1995, Pub. L. No. 104-134, § 803, 110 Stat. 1321-70 (1996) (codified at 42 U.S.C. § 1997).

<sup>199</sup>See Brief for Petitioners at 21, *Porter*, 532 U.S. at 1065 (No. 00-853) (quoting *Comm’r v. Lundy*, 516 U.S. 235, 250 (1996)).

<sup>200</sup>See *Smith v. Zachary*, 255 F.3d 446, 448 (7th Cir. 2001).

both 3626 and 1997 address the solutions and limitations of prisoner litigation.<sup>201</sup> Moreover, as the court in *Smith v. Zachary* indicated, “[b]oth sections are devoted to various aspects of prison litigation, including: settlement agreements, the appointment of special masters, attorneys’ fees awards, the use of telephonic hearings, waiver, and limitations on recovery.”<sup>202</sup> All these similarities suggest that Congress intended the courts to use section 3626(g)(2) to define the term “prison conditions” as used in section 1997e(a).

The most compelling similarity between sections 1997e(a) and 3626(g)(2), however, is that both provisions share the same objective; to deter the federal judiciary from intervening in the prison systems’ administrative duties. The Second Circuit in *Nussle* argued that while section 1997e(a) is concerned with “filtering out frivolous suits administratively, before they get to court,” section 3626(g)(2) is “concerned with the different purpose of preventing courts from micromanaging prison systems.”<sup>203</sup> This argument is not persuasive. Section 1997e(a) requires inmates to use the prison system’s agencies to address their concerns before filing suit in federal court.<sup>204</sup> This exhaustion requirement keeps the federal judiciary from becoming involved in the administrative processes of the prison until the prison has a chance to resolve the prisoners’ grievances.<sup>205</sup> Also, the exhaustion requirement gives back to prison administrators the ability to decide matters of routine prison administration.<sup>206</sup> Therefore, because section 1997e(a) also seeks to prevent judicial interference, there is strong evidence that the Second Circuit misinterpreted the section when it stated “sections 3626(g)(2) and 1997e(a) advance distinct statutory purposes.”<sup>207</sup>

Even if section 3626(g)(2) did not define “prison conditions,” the plain meaning of section 1997e(a) suggests that excessive force claims are included in the term “prison conditions” and thus, must be administratively exhausted. The Second Circuit in *Nussle* argued that the plural form of the word “conditions” as used in section 1997e(a) could not denote a single, isolated event such as assault.<sup>208</sup> Instead the word “conditions” signifies “attendant circumstances” or “existing state of affairs.”<sup>209</sup> This argument is flawed for a number of reasons. First, noting the distinction between plural and singular words is not a commonly used practice of

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<sup>201</sup>*Id.* at 448-49.

<sup>202</sup>*Id.* at 449.

<sup>203</sup>*Nussle v. Willette*, 224 F.3d 95, 103-04 (2d Cir. 2000), *cert. granted sub nom*, Porter v. Nussle, 532 U.S. 1065 (2001).

<sup>204</sup>42 U.S.C. § 1997e(a).

<sup>205</sup>*See Prieser v. Rodriguez*, 411 U.S. 475, 492 (1973).

<sup>206</sup>*See Prieser*, 411 U.S. at 492 (“[B]ecause most potential litigation involving . . . prisoners arises on a day-to-day basis, it is most efficiently and properly handled by the [prison’s] administrative bodies.”).

<sup>207</sup>*Nussle*, 224 F.3d at 103.

<sup>208</sup>*Id.* at 101.

<sup>209</sup>*Id.* (relying on the definition of “conditions” located at WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 473 (1961)).

statutory interpretation.<sup>210</sup> The United States Code, where section 1997e(a) is located, expressly states “[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise ... words importing the plural include the singular.”<sup>211</sup> Applying this rule of construction, one can safely assume that Congress intended the plural form of “prison conditions” to apply to a singular event such as assault.

Second, it is not clear that assault claims arise out of a “single or momentary” event. Instead, the nature of an assault by a prison guard suggests that there are problems within the prison’s management system.<sup>212</sup> As the court in *Smith v. Zachary* indicated, “[a]n assault by a prison guard could be a by-product of systematic problems, including poor hiring practices, insufficient training and supervision, or an inadequate procedure for responding to prison riots or insubordinate behavior by prisoners.”<sup>213</sup> When examining the term “prison conditions” in the context of a correctional institution, it is apparent that there is no distinction between the plural form and the singular form of the word “conditions.”<sup>214</sup> Therefore, it is clear from the plain meaning of section 1997e(a) that claims of excessive force are included in the term “prison conditions” and thus, must be administratively exhausted.

*B. The Purpose and Legislative History of 1997e(a) Supports Exhaustion of Excessive Force Claims*

Not only does the definition of “prison conditions” and the plain meaning of section 1997e(a) suggest that excessive force claims must be administratively exhausted, but the purpose and legislative history of the PLRA illustrates Congress’ intention to require exhaustion of excessive force claims. The general rule on statutory interpretation requires an interpreter to first rely on plain text to determine the meaning and purpose of a statute.<sup>215</sup> Then, if the statute is ambiguous, an interpreter can look to the statute’s legislative history.<sup>216</sup> Despite the apparent clarity of the term “prison conditions,” some courts have consulted the legislative

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<sup>210</sup>*Smith v. Zachary*, 255 F.3d 446, 449 (7th Cir. 2001) (citing 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47:34 (6th ed. 2000)).

<sup>211</sup>1 U.S.C. § 1 (2000).

<sup>212</sup>*Smith*, 255 F.3d at 449.

<sup>213</sup>*Id.*

<sup>214</sup>*Id.*

<sup>215</sup>*See Carter v. United States*, 530 U.S. 255, 271 (2000) (“In analyzing a statute, we begin by examining the text, not by ‘psychoanalyzing those who enacted it.’”); *FDIC v. Meyer*, 510 U.S. 471, 476 (1994) (“In the absence of such a definition, we construe a statutory term in accordance with its ordinary or natural meaning.”); *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.”); John Paul Stevens, *The Shakespeare Canon of Statutory Construction*, 140 U. PA. L. REV. 1373, 1374 (1992) (stating that the first step in statutory interpretation is to read the statute).

<sup>216</sup>*See McCarthy v. Bronson*, 500 U.S. 136, 139 (1991); *Crandon v. United States*, 494 U.S. 152, 158 (1990) (interpreting a statute also requires courts to look to the “object and policy” of the statute).

history of the PLRA.<sup>217</sup> Yet, the purpose and legislative history of the PLRA also support the conclusion that Congress intended the exhaustion requirement to encompass excessive force claims.

### 1. Congress' Purpose of Deterring Frivolous Prisoner Litigation Requires Exhaustion

By requiring exhaustion, Congress intended, in part, to reduce the number of frivolous lawsuits filed by prisoners.<sup>218</sup> Because excessive force claims can also be frivolous, Congress must have intended these claims be exhausted as well.<sup>219</sup> Prisoners can allege they were exposed to malicious nudges,<sup>220</sup> or that a loud reprimand by a prison guard is an unnecessary use of force. The prisoner could even claim an offensive glance by a prison guard is harassment.<sup>221</sup> The possibilities of frivolous excessive force claims are infinite.<sup>222</sup> Therefore, allowing an excessive force exception to the exhaustion requirement would undermine Congress' intention of reducing the number of frivolous lawsuits filed by prisoners.<sup>223</sup>

Congress' use of statistical studies also demonstrates its intent to include excessive force claims in the exhaustion requirement. Congress used statistical studies to support its claim that most prisoner lawsuits are frivolous and burdensome upon the federal judiciary.<sup>224</sup> These studies made no distinction between excessive force claims and other conditions of confinement claims.<sup>225</sup> By failing to make this distinction, Congress projected its view that any federal law claim has the potential to be frivolous.<sup>226</sup> Thus, in order to reduce the number of frivolous lawsuits, it is reasonable to conclude that Congress required all federal claims, including excessive force claims, to be administratively exhausted.

Moreover, creating an exception for excessive force claims would frustrate Congress' goal of reducing the federal judiciary's burden of prisoner litigation. Commentators that refuse to require exhaustion believe that a distinction should be made between excessive force claims resulting from ongoing conditions, and excessive force claims resulting from specific acts of alleged misconduct.<sup>227</sup> This approach, however, would generate an additional amount of work for the district

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<sup>217</sup>See *Nussle v. Willette*, 224 F.3d 95, 103-06 (2d Cir. 2000), *cert. granted sub nom*, *Porter v. Nussle*, 532 U.S. 1065 (2001).

<sup>218</sup>See discussion *supra* Part II.B.

<sup>219</sup>See *Smith v. Zachary*, 255 F.3d 446, 449 (7th Cir. 2001).

<sup>220</sup>*Id.* at 452.

<sup>221</sup>*Id.*

<sup>222</sup>*Id.*

<sup>223</sup>*Id.*

<sup>224</sup>See 141 CONG. REC. 26,548 (1995).

<sup>225</sup>See *id.*

<sup>226</sup>*Nussle v. Willette*, 224 F.3d 95, 101 (2d Cir. 2000), *cert. granted sub nom*, *Porter v. Nussle*, 532 U.S. 1065 (2001).

<sup>227</sup>See *Willette*, 244 F.3d at 102-03.

courts.<sup>228</sup> Courts would first have to determine if claims of excessive force are ongoing conditions or single acts of misconduct.<sup>229</sup> Because this distinction would be difficult to recognize, unnecessary prisoner litigation would continually burden the federal judiciary.<sup>230</sup>

## 2. Exhaustion Furthers the PLRA's Purpose of Preventing Judicial Micromanagement Over Prison Administrations

Reducing the amount of frivolous suits was not Congress' only concern when amending section 1997e(a). By amending 1997e(a), Congress also plainly intended to prevent federal courts from interfering with the management of prison systems.<sup>231</sup> In 1996, Congress created a subsection to 1997e, which dealt directly with frivolous prisoner litigation.<sup>232</sup> This subsection, 1997e(c), gave the courts the power to dismiss suits that were frivolous, malicious, or fail to state a cause of action.<sup>233</sup> If 1997e's only objective was to avoid frivolous litigation, then Congress need not go further.<sup>234</sup> Congress, however, continued by amending section 1997e(a) to require exhaustion of all federal claims.<sup>235</sup> Therefore, when Congress amended 1997e(a), it sought not only to bar frivolous prisoner litigation, but also, to reduce the federal judiciary's intervention into the nation's prison systems by allowing prison administrators to try to resolve meritorious claims first.

Finally, an exception to the exhaustion requirement would undermine Congress' objective of reducing the intervention of federal courts into the management of prison systems. An exception for excessive force claims would require a two-step process. First, the adjudicator would have to decide whether a particular claim arose out of an ongoing condition or a specific act of alleged misconduct.<sup>236</sup> Then, if the

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<sup>228</sup>See *Beeson v. Fishkill Corr. Facility*, 28 F. Supp. 2d 884, 892 (S.D.N.Y. 1998).

<sup>229</sup>See *McCarthy v. Bronson*, 500 U.S. 136, 143 (1991).

<sup>230</sup>*Id.*

<sup>231</sup>See discussion *supra* Part II.B.

<sup>232</sup>See *Smith v. Zachary*, 255 F.3d 446, 451 (7th Cir. 2001).

<sup>233</sup>42 U.S.C. § 1997e(c) (1994 & Supp. 1999). Section 1997e(c) states:

The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. § 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

*Id.*

<sup>234</sup>*Smith*, 255 F.3d at 451.

<sup>235</sup>*Id.*

<sup>236</sup>See *Nussle v. Willette*, 224 F.3d 95, 102-03 (2d Cir. 2000), *cert. granted sub nom.*, *Porter v. Nussle*, 532 U.S. 1065 (2001).

adjudicator decided that the claim was the result of a specific act, the adjudicator would have another decision regarding the claim's legal merit.<sup>237</sup> This long and difficult two-step process is not a question of fact that could be determined by prison administrations.<sup>238</sup> Instead, the process is one of legal analysis, which requires the legal expertise of the federal judiciary.<sup>239</sup> Consequently, an excessive force exception would defeat the purpose of the exhaustion requirement because the federal judiciary would have to supervise the prison's activities before the prison had a chance to resolve the conflict.<sup>240</sup> Therefore, an exception for excessive force claims would defeat the PLRA's purpose of preventing the federal judiciary from interfering with prison's administrative processes.

The purpose and legislative history of the PLRA's exhaustion requirement supports the conclusion that Congress intended to include claims of excessive force. When Congress amended section 1997e(a), it expressly stated that the purpose of the PLRA amendments was to prevent frivolous prisoner litigation and the federal courts' micromanagement over prison systems. Creating an exception for excessive force claims would defeat these two purposes. Therefore, when Congress broadened section 1997e(a), it deliberately created a comprehensive exhaustion requirement that would include claims of excessive force.

*C. Two Supreme Court Decisions Add to the View that the PLRA's Exhaustion Requirement Includes Claims of Excessive Force*

Two Supreme Court cases confirm the notion that section 1997e(a) requires prisoners to exhaust all administrative procedures before filing excessive force claims in federal court. *McCarthy v. Bronson*<sup>241</sup> stands for the proposition that if Congress intended the narrower term "conditions of confinement" to include excessive force claims, then surely the broader term "prison conditions" includes claims of excessive force.<sup>242</sup> Therefore, claims of excessive force must be administratively exhausted because claims regarding "prison conditions" are subject to exhaustion. Additionally, although the Supreme Court in *Booth v. Churner* did not address the specific issue of an excessive force claim's subjection to exhaustion, by dismissing the case prior to determining the excessive force issue, the Court created a presumption that the PLRA requires exhaustion of excessive force claims. These reasons support the conclusion that the Supreme Court's decisions in *McCarthy* and *Booth* create a strong presumption that prisoners' excessive force claims are subject to the exhaustion requirement.

1. *McCarthy v. Bronson*

The Supreme Court's decision in *McCarthy v. Bronson* adds to the view that the exhaustion requirement includes claims of excessive force. In *McCarthy*, a prisoner

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<sup>237</sup>See *McCarthy v. Bronson*, 500 U.S. 136, 143 (1991).

<sup>238</sup>*Id.*

<sup>239</sup>*Id.*

<sup>240</sup>*Id.*

<sup>241</sup>500 U.S. 136 (1991).

<sup>242</sup>See *id.*

brought a federal action claiming a correction officer exerted excessive force when he transferred the prisoner between cells.<sup>243</sup> The District Court found in favor of the officers and the prisoner appealed, challenging the court's referral of the case to a magistrate for findings of fact and recommendation of disposition.<sup>244</sup> The Court of Appeals for the Second Circuit affirmed the decision.<sup>245</sup> On writ of certiorari, the Supreme Court affirmed the lower courts' decisions, and held that the statutory language "prisoner petitions challenging conditions of confinement" included both ongoing practices and isolated acts of misconduct, such as assault.<sup>246</sup> Therefore, the court concluded, under 28 U.S.C. § 636(b)(1)(B), the District Court could refer the prisoners' excessive force claim to the magistrate judge because the term "conditions of confinement" necessarily includes claims of excessive force.<sup>247</sup>

Justice Stevens, writing for the majority, offered a number of logical reasons for including excessive force claims into the phrase "conditions of confinement." First, Justice Stevens noted that a broad reading of the term "conditions of confinement" is appropriate when determining its proper meaning.<sup>248</sup> The Court conceded that the "most natural reading" of the term "conditions of confinement" would not include isolated events, such as claims of excessive force.<sup>249</sup> The Court noted, however, that the term "conditions of confinement" should not be read "in isolation."<sup>250</sup> The Court explained that reading the term in its entirety suggests Congress' intent to include all prisoner petitions, not just claims alleging ongoing or continuous misconduct.<sup>251</sup> In justifying its position, the Court relied on its decision in *Preiser v. Rodriguez*.<sup>252</sup> In this case, the Supreme Court held that specific instances of misconduct were encompassed by the term "conditions of confinement."<sup>253</sup> For these reasons, the Supreme Court in *McCarthy* also concluded, the term "conditions of confinement" naturally encompasses "single episode cases," such as an assault.<sup>254</sup>

The Court also used Congressional intent behind the amendment to the Magistrate's Act to support its conclusion. The Court reasoned that Congress emphasized greater utilization of magistrates in order to lessen the federal dockets' burden.<sup>255</sup> The Court deduced that a definition of "conditions of confinement"

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<sup>243</sup>*Id.* at 138.

<sup>244</sup>*Id.*

<sup>245</sup>*Id.*

<sup>246</sup>*McCarthy*, 500 U.S. at 142-44.

<sup>247</sup>*Id.* at 139.

<sup>248</sup>*Id.*

<sup>249</sup>*Id.*

<sup>250</sup>*McCarthy*, 500 U.S. at 139.

<sup>251</sup>*Id.*

<sup>252</sup>411 U.S. 475 (1982).

<sup>253</sup>*Id.* at 498-99.

<sup>254</sup>*McCarthy*, 500 U.S. at 143.

<sup>255</sup>*Id.* at 142.

similar to the one used by the Supreme Court in *Preiser*, is consistent with Congress' rationale because it permits referrals of an extensive group of cases.<sup>256</sup> The Court clarified its position by noting that a simpler reading of "conditions of confinement" would "avoid[] the litigation that otherwise would inevitably arise when trying to identify the precise contours of [a] petitioner's suggested exception for single episode cases."<sup>257</sup> In other words, the Court suggested, an interpretation of the definition to exclude isolated events "would generate additional work for the district courts because the distinction between cases challenging ongoing conditions and those challenging specific acts of alleged misconduct will often be difficult to identify."<sup>258</sup> Therefore, the Court concluded, the only way to avoid the inevitable burden on the federal dockets would be to include a broad category of prisoner actions, including claims regarding isolated events of misconduct, such as assault.<sup>259</sup>

By defining the term "prison conditions" in section 3626 of the PLRA, Congress intended to circumvent the "plain meaning problem" in *McCarthy* by clarifying its intent to require administrative exhaustion of all prisoner claims, including claims of excessive force.<sup>260</sup> Congress used a two-part test in defining the term "prison conditions." And as noted earlier, the Supreme Court in *McCarthy* already interpreted the first part of the definition, "conditions of confinement" to encompass all prisoner petitions, even those claiming isolated events of misconduct, such as excessive force.<sup>261</sup> Congress, however, in a broadening effort, also included the phrase "effects of actions by government officials," which even more closely describes isolated events of misconduct than the term "conditions of confinement."<sup>262</sup> Therefore, by covering all areas of ambiguity, Congress has created a strong presumption that it intended the term "prison conditions" to include isolated events of misconduct, such as claims of excessive force.<sup>263</sup>

## 2. *Booth v. Churner*

The Supreme Court's decision in *Booth v. Churner* also confirms the notion that claims of excessive force should be administratively exhausted prior to filing suit in federal court. In *Booth*, the plaintiff filed an action alleging excessive force by prison officials.<sup>264</sup> The Supreme Court affirmed the Third Circuit's ruling that an inmate was required to exhaust administrative remedies before filing suit in federal

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<sup>256</sup>*Id.* at 142-43.

<sup>257</sup>*Id.* at 143.

<sup>258</sup>*McCarthy*, 500 U.S. at 143.

<sup>259</sup>*Id.*

<sup>260</sup>*Booth v. Churner*, 206 F.3d 289, 296 (3d Cir. 2000), *aff'd on other grounds*, 532 U.S. 731 (2001).

<sup>261</sup>*McCarthy*, 500 U.S. at 143.

<sup>262</sup>*Id.*

<sup>263</sup>*Id.*

<sup>264</sup>*Booth*, 532 U.S. at 821.

court even where the inmate sought only money damages, which were not available through the prison administrative process.<sup>265</sup>

The Seventh Circuit in *Smith v. Zachary* noticed that, although the Supreme Court in *Booth* did not address the specific issue of an excessive force claims' subjection to exhaustion, the Court created a presumption, by dismissing the case prior to determining the excessive force issue, that the PLRA requires exhaustion of excessive force claims.<sup>266</sup>

Also, in addition to this general observation, the Supreme Court's decision in *Booth* can be likened to the present issue plaguing the courts—whether the PLRA requires claims of excessive force to be administratively exhausted. In reaching its conclusion, the Supreme Court in *Booth* explained that the amendments to 1997e(a) specifically require prisoners to exhaust administrative remedies, where as prior to the amendments, the federal judiciary used its discretion in requiring exhaustion.<sup>267</sup> The Court noted that section 1997e(a) was amended in this way in order to subject prisoners' actions to the exhaustion requirement.<sup>268</sup> The Court stated that by doing so, Congress intended to deter frivolous claims and promote better-organized litigation once a dispute transferred to court.<sup>269</sup> Therefore, the Court reasoned, an exception would not support Congress' true intent.<sup>270</sup>

The reasoning behind the decision in *Booth* can be logically equated to the issue of whether claims of excessive force are encompassed by the exhaustion requirement. As stated throughout this Note, an exception to the exhaustion requirement for excessive force claims would require a judge to decipher whether the alleged misconduct was ongoing and continuous or an isolated event.<sup>271</sup> As the Court in *Booth* so eloquently stated, exhaustion is no longer the courts' decision.<sup>272</sup> Therefore, courts should not interfere with the exhaustion process by creating an exception, with such blurred lines, that could only be identified by a judiciary. Also, on the same grounds, an exception for excessive force claims would not deter frivolous litigation or cultivate better-prepared litigation. For all these reasons, one could fairly interpret the Supreme Court's decision in *Booth* to require prisoners to exhaust all administrative remedies prior to filing an excessive force claim in federal court.

The Supreme Court in *McCarthy v. Bronson*, in holding that claims of excessive force are included in the term "conditions of confinement," created a presumption that claims of excessive force are also "prison conditions" as defined in section 3626(g)(2) and therefore, are subject to the exhaustion requirement.<sup>273</sup> Additionally,

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<sup>265</sup>*Id.* at 825.

<sup>266</sup>*Smith v. Zachary*, 255 F.3d 446, 452 (7th Cir. 2001).

<sup>267</sup>*Booth*, 532 U.S. 731, 739 (2001).

<sup>268</sup>*Id.* at 737.

<sup>269</sup>*Id.* at 741.

<sup>270</sup>*Id.* at 825.

<sup>271</sup>See discussion *supra* Part IV.B.2.

<sup>272</sup>*Booth*, 532 U.S. at 739.

<sup>273</sup>*McCarthy v. Bronson*, 500 U.S. 136, 139 (1991).

the Supreme Court in *Booth v. Churner* created a presumption that excessive force claims are subject to the exhaustion requirement by dismissing the case prior to deciding whether an excessive force claim is included in the exhaustion requirement.<sup>274</sup> For these reasons, one can safely presume that excessive force claims are included in the term “prison conditions” and thus, are subject to the exhaustion requirement.

*D. Efficiency Requires Exhaustion of Excessive Force Claims*

Requiring exhaustion of excessive force claims is the most efficient and effective process. Because a lawsuit is very expensive and time consuming, a prisoner may prefer an administrative adjudication before a judicial proceeding. Additionally, the federal judiciary benefits greatly from the decreasing amount of civil litigation. Also, administrative adjudication can prove to be extremely valuable to the nation’s prisons because such institutions regain the power over day-to-day decisions. Moreover, Congressional goals of deterring frivolous prisoner litigation and preventing courts from interfering with prisons’ administrative procedures are met. For all these reasons, the only efficient and effective process is to require exhaustion of excessive force claims.

Prisoners can still file a lawsuit in federal court. Some commentators have argued that requiring prisoners to exhaust administrative remedies bars a prisoner’s constitutional right of access to the courts.<sup>275</sup> This argument, however, lacks merit. Requiring administrative review does not prohibit a prisoner’s ability to file suit; it simply establishes a prerequisite.<sup>276</sup> If the prisoner’s claim cannot be resolved appropriately at the administrative level, the prisoner is still able to file suit in federal court.<sup>277</sup>

In fact, for a variety of reasons, a prisoner with a legitimate challenge will probably prefer an administrative adjudication over a judicial proceeding. Litigation in courts can take months, even years to complete, which can prove to be burdensome for the prisoner financially.<sup>278</sup> More importantly, judicial proceedings produce results years later.<sup>279</sup> Therefore, a more expeditious proceeding, such as an administrative adjudication, can prove to be extremely advantageous for an inmate’s overall welfare, especially for those inmates claiming excessive force.<sup>280</sup> The administrative procedure forces the prison to justify or explain its internal procedures, which in turn, allows prisons to address the problem quickly.<sup>281</sup> The

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<sup>274</sup>*Booth*, 532 U.S. at 731.

<sup>275</sup>See *Smith v. Zachary*, 255 F.3d 446, 451 (7th Cir. 2001); JAMES F. ANDERSON & LARONISTINE DYSON, *LEGAL RIGHTS OF PRISONERS: CASES AND COMMENTS* 131 (2001).

<sup>276</sup>*Smith*, 255 F.3d at 451.

<sup>277</sup>*Id.*

<sup>278</sup>J. MICHAEL KEATING, JR. ET AL., *U.S. DEP’T OF JUSTICE, GRIEVANCE MECHANISMS IN CORRECTIONAL INSTITUTIONS* 4 (1975).

<sup>279</sup>*Id.*

<sup>280</sup>See *Smith*, 255 F.3d at 450-51.

<sup>281</sup>*Id.* at 450-51 (“Requiring prompt notice and exhaustion also gives prison officials an opportunity to address a situation internally.”); *Freeman v. Francis*, 196 F.3d 641, 644 (6th

prison system can reprimand or even discharge employees who improperly exert excessive force upon a prisoner.<sup>282</sup> Also, the prison administration could provide a prisoner with monetary remedies or even protection from the abusers fairly rapidly after the misconduct occurred, as opposed to years later if a judicial proceeding was entered.<sup>283</sup> For all these reasons, exhaustion of administrative remedies is incredibly helpful for all inmates.

The federal judiciary also benefits from the PLRA's exhaustion requirement. Administrative agencies can provide useful records that prove to be enormously useful for future litigation in court.<sup>284</sup> Such records focus more clearly on the issues at hand.<sup>285</sup> Also, these records present the arguments more coherently and comprehensively – one of the major concerns that plagued the courts prior to the enactment of the PLRA.<sup>286</sup> Moreover, the administrative process affords district courts more time to address serious concerns.<sup>287</sup> By requiring exhaustion, more cases are resolved at the administrative level, thereby clearing up the federal judiciary's dockets.<sup>288</sup> Therefore, the federal court can spend more time with the meritorious and complex cases, such as cases involving the use of excessive force.

Administrative adjudication can prove to be valuable for the prison administrations as well. First, requiring exhaustion prevents outside interference by the federal judiciary into the prison's administrative procedures, thereby allowing the prison system to exercise the authority granted to it by the PLRA.<sup>289</sup> Moreover, by requiring exhaustion, the prison administration is able to preserve financial resources because the agency avoids the heavy costs of defending excessive force suits in

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Cir. 1999) (“Prisons need to know about and address claims of excessive force as they would any other claim concerning prison life so that steps may be taken to stop problems immediately if they exist.”).

<sup>282</sup>See *Smith*, 255 F.3d at 450-51; *Freeman*, 196 F.3d at 643-45.

<sup>283</sup>See *Smith*, 255 F.3d at 450-51; *Freeman*, 196 F.3d at 643-45; KEATING, JR. ET AL., *supra* note 278, at 4.

<sup>284</sup>*McCarthy v. Madigan*, 503 U.S. 140, 145 (1992) (noting exhaustion “may produce a useful record for subsequent judicial consideration”); *Smith*, 255 F.3d at 451; *Booth v. Churner*, 206 F.3d 289, 298 n.9 (3d Cir. 2000), *aff’d on other grounds*, 532 U.S. 731 (2001).

<sup>285</sup>See *Smith*, 255 F.3d at 451; *Nyhuis v. Reno*, 204 F.3d 65, 74 (3d Cir. 2000) (quoting *Alexander v. Hawk*, 159 F.3d 1321, 1326 n.11 (11th Cir. 1998)) (“With these considerations in mind, Congress mandated that prisoners exhaust administrative remedies and eliminated courts’ conducting case-by-case inquiries until after a prisoner has presented his claims to a particular administrative remedy program, which often helps focus and clarify the issues for the court.”).

<sup>286</sup>See *Smith*, 255 F.3d at 451; *Nyhuis*, 204 F.3d at 74.

<sup>287</sup>*Smith*, 255 F.3d at 451; *Booth*, 206 F.3d at 298 n.9.

<sup>288</sup>See *Smith*, 255 F.3d at 451; *Booth* 206 F.3d at 298 n.9.

<sup>289</sup>*McCarthy v. Madigan*, 503 U.S. 140, 145 (1992) (“Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency.”); *Nyhuis*, 204 F.3d at 73-74 (quoting *Alexander*, 159 F.3d at 1325 n.11) (“Congress desired to wrest control of our prisons from the lawyers and the inmates and return that control to competent administrators appointed to look out for society’s interests as well as the legitimate needs of prisoners.”).

federal court.<sup>290</sup> For these reasons, the most efficient process for prisoner grievances is the administrative process.

The apparent benefit of requiring exhaustion is to achieve Congress' goals of deterring frivolous prisoner litigation and minimizing the courts interference in the prisons administrative procedures. Perhaps, the exhaustion requirement's most effective achievement is meeting these Congressional goals. By enacting the PLRA, Congress hoped to deter frivolous prisoner litigation.<sup>291</sup> The exhaustion requirement accomplished this pursuit.<sup>292</sup> Administrative adjudication helps weed out frivolous suits, which in turn, lessens the burden on the courts, thereby affording the court more time to hear meritorious prisoner claims.<sup>293</sup> Additionally, exhaustion requires prisoners to take their claims to the administrative procedure first, which returns the administrative power back to the prisons.<sup>294</sup> Therefore, by meeting the intended goals of Congress, the exhaustion requirement has proved to be both efficient and effective.

Efficiency and effectiveness demand the courts to disallow any exceptions for the exhaustion requirement. The exhaustion requirement proves to be extremely beneficial, not only for the federal judiciary and the prison administrations, but also for the prisoner. Also, Congressional goals, by themselves, provide enough reasons for requiring excessive force claims to be administratively exhausted. For these reasons, the only efficient and effective process is the administrative grievance process.

#### V. CONCLUSION

In an effort to halt the enormous trend of frivolous prisoner litigation and the overabundance of judicial interference into the American prison systems, Congress enacted a necessary and appropriate piece of legislation, the Prisoner Litigation Reform Act. Despite the apparent clarity of the legislation, conflict has arisen among the Appellate Courts regarding the exhaustion requirement.

The Supreme Court should settle the apparent conflict among the circuits by requiring all prisoner claims to be administratively exhausted, even claims of excessive force. The Court should follow the definition of "prison conditions" provided in section 3626(g)(2) of the PLRA because Congressional intent, as well as

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<sup>290</sup>See KEATING, JR. ET AL., *supra* note 278, at 4; Lynn S. Branham, *Limiting the Burdens of Pro Se Inmate Litigation: A Technical-Assistance Manual for Courts, Correctional Officials, and Attorneys General*, 1997 A.B.A. CRIM. JUST. SEC. 33-34.

<sup>291</sup>See *supra* note 7, and accompanying text.

<sup>292</sup>*Freeman v. Francis*, 196 F.3d 641, 644 (6th Cir. 1991); see John Scalia, U.S. Dep't of Justice, *Prisoner Petitions Filed in U.S. District Courts, 2000, with Trends 1980-2000*, Federal Justice Statistics Program, at <http://www.ojp.usdoj.gov/bjs/pub/ascii/ppfusd00.txt> (last visited Jan. 7, 2002) ("Since the enactment of the Prison Litigation Reform Act (PLRA) in 1996 the number of civil rights petitions filed in the U.S. district courts has decreased. Between 1995 (the year before implementation) and 2000, the number of civil rights petitions decreased from 41,679 to 25,504.").

<sup>293</sup>See *Smith v. Zachary*, 255 F.3d 446, 451 (7th Cir. 2001); *Booth v. Churner*, 206 F.3d 289, 298 n.9 (3d Cir. 2000), *aff'd on other grounds*, 532 U.S. 731 (2001).

<sup>294</sup>STEIN ET AL., *supra* note 82, at 49-3.

Supreme Court precedent, supports applying section 3626's definition of "prison conditions." By applying this definition, acts of excessive force would fall into the category of "prison conditions," and as such, claims of excessive force would require exhaustion.

Additionally, requiring exhaustion of excessive force claims is the most efficient and effective process, not only for the prison administrations and the federal judiciary, but also for the prisoner. Moreover, exhaustion of excessive force claims furthers Congressional goals of deterring frivolous prisoner litigation, preventing judicial micromanagement over prisons, lessening the burden on the federal docket, and decreasing the waste of taxpayer dollars. For all these reasons, the Supreme Court should find that the exhaustion requirement of the PLRA requires all federal claims to be administratively exhausted before filing suit in federal court, even claims of excessive force.

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