

No. 10-15139

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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JOHN WESLEY WILLIAMS,  
*Plaintiff-Appellant,*

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS & REHABILITATION, *et al.*,  
*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

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**APPELLANT'S REPLACEMENT BRIEF**

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## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	ii
JURISDICTIONAL STATEMENT.....	1
INTRODUCTION.....	1
ISSUES PRESENTED FOR REVIEW .....	4
STATEMENT .....	4
A.    Relevant Legal Provisions. ....	4
B.    Factual Background.....	6
C.    Proceedings Below.....	10
SUMMARY OF THE ARGUMENT.....	11
STANDARD OF REVIEW .....	14
ARGUMENT .....	14
I.    THE COMPLAINT PROPERLY JOINS PARTIES AND CLAIMS. ....	14
A.    The Federal Rules Of Civil Procedure Control Joinder Of Parties And Claims For All Litigants, Including Prisoners.....	14
1. <i>The Federal Rules encourage expansive joinder of               parties and claims.</i> .....	14
2. <i>The Seventh Circuit’s decision in George v. Smith is               not to the contrary.</i> .....	17
3. <i>The PLRA does not modify joinder standards.</i> .....	19
B.    The District Court Erred In Finding Misjoinder. ....	22
1. <i>The claims arise out of the same series of               transactions and occurrences.</i> .....	23
2. <i>The claims require resolution of common questions               of law and fact.</i> .....	24
II.    MISJOINDER IS NOT A BASIS TO DISMISS. ....	26
CONCLUSION.....	29

## TABLE OF AUTHORITIES

	Page(s)
<b>CASES</b>	
<i>Acevedo v. Allsup’s Convenience Stores, Inc.</i> , 600 F.3d 516 (5th Cir. 2010).....	27
<i>Avila v. Cate</i> , 2009 WL 5029827 (E.D. Cal. 2009) .....	13
<i>Beacon Theatres, Inc. v. Westover</i> , 359 U.S. 500 (1959).....	15
<i>Boriboune v. Berge</i> , 391 F.3d 852 (7th Cir. 2004).....	20
<i>Clay v. Martin</i> , 509 F.2d 109 (2d Cir. 1975) .....	27
<i>Coughlin v. Rogers</i> , 130 F.3d 1348 (9th Cir. 1997).....	15, 23, 25, 27
<i>Demerson v. Warden of SATF</i> , 2009 WL 1211396 (E.D. Cal. 2009) .....	13
<i>Desert Empire Bank v. Ins. Co. of N. Am.</i> , 623 F.2d 1371 (9th Cir. 1980).....	15, 23
<i>DirectTV, Inc. v. Leto</i> , 467 F.3d 842 (3d Cir. 2006) .....	27
<i>DIRECTV, Inc. v. Collins</i> , 244 F.R.D. 408 (S.D. Ohio 2007) .....	27
<i>Elmore v. Henderson</i> , 227 F.3d 1009 (7th Cir. 2000).....	28
<i>George v. Smith</i> , 507 F.3d 605 (7th Cir. 2007).....	<i>passim</i>

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
<i>Glendora v. Malone</i> , 917 F. Supp. 224 (S.D.N.Y. 1996).....	27
<i>Granger v. Rauch</i> , 388 Fed. App'x 537 (7th Cir. 2010).....	18
<i>Hagan v. Rogers</i> , 570 F.3d 146 (3d Cir. 2009) .....	20
<i>Hubbard v. Haley</i> , 262 F.3d 1194 (11th Cir. 2001).....	20
<i>Hunter v. United Van Lines</i> , 746 F.2d 635 (9th Cir. 1984).....	16
<i>Jones v. Bock</i> , 549 U.S. 199 (2007) .....	19, 20, 21
<i>League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency</i> , 558 F.2d 914 (9th Cir. 1977).....	15, 21
<i>Lopez v. Schwarzenegger</i> , 2010 WL 3943683 (E.D. Cal. 2010) .....	13
<i>Moore v. N.Y. Cotton Exch.</i> , 270 U.S. 593 (1926) .....	16
<i>Mosley v. Gen. Motors Corp.</i> , 497 F.2d 1330 (8th Cir. 1974).....	16, 23
<i>Nat'l Ass'n of Home Builders v. Defenders of Wildlife</i> , 551 U.S. 644 (2007) .....	19
<i>In re Prison Litig. Reform Act</i> , 105 F.3d 1131 (6th Cir. 1997).....	20
<i>Quezada v. Gricewich</i> , 2009 WL 1211369 (E.D. Cal. 2009) .....	13

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
<i>Resnick v. Hayes</i> , 213 F.3d 443 (9th Cir. 2000).....	14
<i>Rose v. Montana</i> , 2010 WL 3724794 (D. Mont. 2010).....	13
<i>Sevilla v. Terhune</i> , 2009 WL 1211393 (E.D. Cal. 2009) .....	13
<i>Smith v. Yates</i> , 2009 WL 5029577 (E.D. Cal. 2009) .....	13
<i>Solomon v. Negrete</i> , 2010 WL 3958709 (E.D. Cal. 2010) .....	13
<i>Southern Construction Co. v. Pickard</i> , 371 U.S. 57 (1962).....	16
<i>Strandlund v. Hawley</i> , 532 F.3d 741 (8th Cir. 2008).....	28
<i>Tahoe Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency</i> , 322 F.3d 1064 (9th Cir. 2003).....	17
<i>Turley v. Gaetz</i> , 625 F.3d 1005 (7th Cir. 2010).....	18
<i>United Mine Workers v. Gibbs</i> , 383 U.S. 715 (1966) .....	15, 26
<i>United States ex rel. Barajas v. Northrop Corp.</i> , 147 F.3d 905 (9th Cir. 1998).....	17
<i>United States v. United Pac. Ins. Co.</i> , 472 F.2d 792 (9th Cir. 1973).....	16

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
<i>W. Sys., Inc. v. Ulloa</i> , 958 F.2d 864 (9th Cir. 1992).....	16
<i>Williams v. Cal. Dep’t of Corr. &amp; Rehab.</i> , No. 09-16965 (Oct. 22, 2009) .....	11
<i>Woodford v. Ngo</i> , 548 U.S. 81 (2006).....	21
<i>Wright v. Gonzales</i> , 2009 WL 1297070 (E.D. Cal. 2009) .....	13
<i>Zichko v. Idaho</i> , 247 F.3d 1015 (9th Cir. 2001).....	28
 <b>Statutes &amp; Rules</b>	
28 U.S.C. § 1915.....	5, 6, 18
28 U.S.C. § 1915A.....	10, 14, 29
Prison Litigation Reform Act of 1995 (“PLRA”), Pub. L. No. 104- 134, 110 Stat. 1321-71 (1996).....	3
Fed. R. Civ. P. 1 .....	5
Fed. R. Civ. P. 13(a).....	15
Fed. R. Civ. P. 18 .....	<i>passim</i>
Fed. R. Civ. P. Rule 20 .....	<i>passim</i>
Fed. R. Civ. P. Rule 21 .....	13, 26, 28, 29
 <b>Other Authorities</b>	
Restatement (Second) of Judgments § 24(1) (1982).....	16

## **JURISDICTIONAL STATEMENT**

### **A. Jurisdiction of the District Court.**

The district court had jurisdiction over appellant John Wesley Williams' *pro se* complaint pursuant to 28 U.S.C. §§ 1331, 2201, & 2202.

### **B. Jurisdiction of the Court of Appeals.**

On December 9, 2009, the district court entered an order dismissing the complaint with prejudice. ER39-40. On December 31, 2009, Williams filed a timely notice of appeal. ER42-43. *See* Fed. R. App. P. 4(a)(1)(A) & 4(c)(1). This Court's jurisdiction rests on 28 U.S.C. § 1291.

## **INTRODUCTION**

In this action, John Wesley Williams has sued the California Department of Corrections and Rehabilitation ("CDCR") and thirteen individuals for alleged violations of his state and federal rights. Williams contends that the defendants conspired to abuse and harass him both because he has previously employed legal processes to assert claims and because he has a psychiatric disability. Williams alleges that, to accomplish this concerted pattern of harassment and intimidation, the defendants cooperated to create a "code of silence" that emboldens their misconduct and precludes effective vindication of rights. This conspiracy, Williams asserts,

has manifested itself in several different occurrences of abuse and harassment.

The Federal Rules of Civil Procedure define both who and for what a plaintiff may sue in a single lawsuit. Rule 20 provides that a plaintiff may join any parties as defendants so long as the relief sought arises “out of the same transaction, occurrence, or series of transactions or occurrences” and “any question of law or fact common to all defendants will arise in the action.” Rule 18, in turn, holds that a plaintiff may assert “as many claims as it has against” a defendant. These rules control all civil suits in federal courts.

In finding that Williams misjoined parties and claims, the district court erred. Perhaps blown off course by expansive language in *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007), the district court appeared to lose sight of the Federal Rules, applying instead an ill-defined test that turns on whether claims are sufficiently “related.” Without considering whether Williams’ claims arise out of the same “series” of “occurrences” or whether they allege common questions of law or fact, the district court dismissed the complaint solely on its unexplained view that Williams had asserted “many unrelated claims.”

That dismissal was error. The Federal Rules apply to incarcerated litigants, as nothing in the Prison Litigation Reform Act of 1995 (“PLRA”), Pub. L. No. 104-134, 110 Stat. 1321-71 (1996), displaces them. Indeed, those liberal joinder rules accord precisely with the PLRA’s purpose of ensuring expeditious resolution of claims brought by incarcerated individuals. Narrowing joinder rules would have the perverse effect of requiring prisoners to file *more* lawsuits, a result irreconcilable with the very purpose of the PLRA.

A straightforward analysis of this complaint under the Federal Rules demonstrates that Williams appropriately joined parties and claims. The relief he seeks relates to the same series of transactions or occurrences—*i.e.*, the pattern of abuse stemming from the alleged conspiracy—and the claims raise common questions of law and fact.

The district court erred on a separate, independent ground. Rule 21 provides a precise and limited remedy when a litigant misjoins parties: the district court may sever claims or dismiss limited parties to cure the misjoinder. That rule flatly prohibits a district court from dismissing an entire suit on the basis of misjoinder. But that is precisely what the court did here. Even if Williams did misjoin parties, the lower court’s response violates the plain text of the Federal Rules.

## ISSUES PRESENTED FOR REVIEW

1. Did the district court err in finding that Williams misjoined parties and claims, even though the asserted claims arise from the same pattern of abuse and harassment and raise common questions of law and fact?

2. If, contrary to our submission, Williams *did* misjoin parties and claims in this litigation, did the district court err in dismissing this lawsuit on that basis, notwithstanding Federal Rule of Civil Procedure 21, which directs that “[m]isjoinder of parties is not a ground for dismissing an action?”

## STATEMENT

### A. Relevant Legal Provisions.

The Federal Rules of Civil Procedure define who, and for what, a plaintiff may sue in a single federal lawsuit. Rule 18 controls joinder of *claims*:

**(a) In General.** A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

Rule 20 delineates permissive joinder of *parties*:

**(a) Persons Who May Join or Be Joined.**

\* \* \*

**(2) Defendants.** Persons \* \* \* may be joined in one action as defendants if:

**(A)** any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

**(B)** any question of law or fact common to all defendants will arise in the action.

**(3) Extent of Relief.** Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

Finally, Rule 21 provides the remedy for misjoinder:

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

These rules “govern the procedure in all civil actions and proceedings in the United States district courts,” save limited exceptions not relevant here. Fed. R. Civ. P. 1.

28 U.S.C. § 1915 authorizes courts to grant *in forma pauperis* status to indigent litigants. Section 1915(g), which codifies a portion of the PLRA, partially restricts the ability of incarcerated litigants to seek relief from court fees:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if

the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). This is the PLRA’s so-called “three-strike” rule.

## **B. Factual Background.**

John Wesley Williams, who alleges that he has a psychiatric disability, was incarcerated by the California Department of Corrections and Rehabilitation (“CDCR”) at California State Prison—Sacramento (“CSPS”). ER2. During his time at CSPS, he contends that he was subjected to a campaign of abuse and intimidation. As part of this coordinated pattern of harassment, Williams asserts that he was unlawfully forced into administrative segregation, that officials were deliberately indifferent to his serious medical needs, that he was shackled in injurious stress positions as retaliatory punishment, and that certain property of his was damaged or stolen.

Three elements connected this unlawful and recurring harassment directed against Williams:

- **Retaliation for prior legal grievances:** Williams argues CSPS employees targeted him for abuse as retaliation for his prior complaints. *See, e.g.*, ER7-9 ¶¶ 25, 27; ER15-16 ¶ 46.

- **Discrimination for psychiatric disability:** Williams contends that CSPA officials planned to mistreat him because of his psychiatric disability. *See, e.g.*, ER8 ¶ 26; ER9-10 ¶ 30; ER11 ¶ 33.
- **Code of silence:** Finally, Williams asserts that this coordinated harassment effort was facilitated and enabled by the “code of silence” that permeated the CSPA facility, as it was designed to “conceal wrongdoings by CDCR employees.” ER7 ¶ 23. *See also* ER6 ¶ 20 (defendants “have acted in concert and used the customs, habits, and practices of the infamous code of silence”); ER11 ¶ 34; ER12-13 ¶¶ 38-39; ER 14 ¶ 42; ER15 ¶ 45; ER17 ¶ 50; ER18 ¶ 53.

Taken together, Williams asserts that these factors motivated and permitted the defendants to engage in several, related occurrences of illegal conduct.

In particular, Williams points to certain specific instances in which the defendants’ conspiracy violated his protected rights. He alleges the following series of occurrences:

- On August 11, 2006, Defendants Lieber, Holmes, and Baughman, transferred him to administrative segregation in retaliation for filing legal complaints. ER7-9 ¶¶ 25-27.

- On August 17, 2006, after Defendants Ramos, Mendoza, Lopez, and Leach retaliated against Williams again for his complaints, Williams attempted to commit suicide. Defendants were deliberately indifferent to Williams' acute medical needs. ER9-11 ¶¶ 29-34.
- On August 18, 2006, Defendant Mendoza destroyed Williams' property while he was treated in the mental health Crisis Treatment Center. ER12 ¶ 37.
- Defendant Grannis conspired to reject Williams' administrative appeals, acting under "the infamous code of silence." ER12-13 ¶ 38. *See also* ER13 ¶¶ 39-40.
- On October 26, 2006, Defendant Mendoza, "in retaliation for protected conduct," improperly handcuffed Williams in a holding cage for retaliation for a civil rights claim, threatened Williams, and taunted him. ER13-14 ¶ 41; ER15 ¶ 44. Williams suffered physical injury after being forced to stand in a stress-shackled position for more than five hours without medicine, water, or the ability to use a restroom. This was especially injurious to Williams; CSPA medical staff had directed that Williams should not be compelled to

stand for a period of time greater than 90 minutes because he has a bullet lodged in his right leg. ER14-15 ¶¶ 42-44.

- On October 27, 2006, Defendants Mendoza and Baughman confined Williams to a holding cage following his discussion in the yard with others about the “code of silence” at CSPA. ER15 ¶ 45.
- On January 8, 2007, Defendant Crane harassed Williams, and, in retaliation for legal process, illegally confiscated Williams’ postage stamps. ER16-17 ¶¶ 48-50.
- On January 16, 2007, at the urging of Defendants Hutchings and Crane, Defendant Morin filed a false disciplinary report against Williams. ER19 ¶¶ 55-57.
- Dr. Kellaher—a CSPA medical doctor—reported harassment of Williams to mental health supervisors. Defendant Baughman deliberately refused Dr. Kellaher’s recommendation that Williams be transferred to a different facility for treatment. ER20 ¶ 59.
- Several defendants participated in a “conclave” between January and February 2007 to conspire about ways to silence Dr. Kellaher and otherwise intimidate Williams. ER20-22 ¶¶ 60-63.

Ultimately, after outside authorities investigated his claims of abuse, Williams was transferred to a different facility. ER22-23 ¶¶ 65-66.

### C. Proceedings Below.

On March 20, 2009, Williams filed a civil complaint against CDCR and thirteen individual defendants. ER1-27. Recounting the preceding factual allegations, Williams asserts related claims under 42 U.S.C. §§ 1981, 1983, & 1985 for violations of the U.S. Constitution; the Americans with Disabilities Act; the Rehabilitation Act; and California law. ER1, 24-26. Williams seeks injunctive and declaratory relief, as well as damages. ER26-27. To his twenty-seven page complaint—a particularly lucid and comprehensive document for a *pro se* litigant—Williams attached several exhibits to document that he had duly exhausted administrative remedies prior to seeking judicial relief. *See* 42 U.S.C. § 1997e(a).

On June 22, 2009, the district court granted Williams’ request to proceed *in forma pauperis*. ER28. In the same order, however, the court dismissed the claims under the PLRA’s screening mechanism, 28 U.S.C. § 1915A(a). The court adopted the Seventh Circuit’s decision in *George v. Smith*, 507 F.3d 605 (7th Cir. 2007): “Unrelated claims against different defendants belong in different suits.” ER31 (quoting *George*, 507 F.3d at 607). Characterizing Williams’ suit as “include[ing] many unrelated claims against more than a dozen defendants,” the court concluded that, “[p]ursuant to *George v. Smith*,” Williams “may not proceed with these un-

related claims regarding different defendants in this action.” ER31. The court thus dismissed the complaint with leave to amend. *Id.*

After the district court denied a motion for reconsideration (ER37-38) Williams filed a notice of appeal. ER46. This Court, however, dismissed the appeal for want of jurisdiction, finding that the district court’s dismissal with leave to amend did not constitute a final order. *See Order, Williams v. Cal. Dep’t of Corr. & Rehab.*, No. 09-16965 (Oct. 22, 2009). On return to the district court, Williams moved for entry of a final judgment, which the court granted on December 9, 2009, again because Williams’ “complaint improperly set forth several unrelated claims against multiple defendants.” ER39-40. After the entry of judgment (ER41), Williams filed the present notice of appeal. ER42.

### SUMMARY OF THE ARGUMENT

In dismissing Williams’ civil rights suit, the district court erred on two separate grounds.

**First**, the district court erred in finding that Williams misjoined parties and claims. The Federal Rules of Civil Procedure—primarily Rules 18 and 20—control permissive joinder. The Seventh Circuit recently agreed that the Federal Rules determine the proper joinder standards for incarce-

rated litigants. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Nothing in the PLRA alters this analysis.

Although the district court appeared to recognize this fundamental principle, it applied an inappropriately-constrained, if not idiosyncratic, view of joinder. Without exploring the tried-and-true framework of Rules 18 and 20, the district court merely deemed Williams' claims "unrelated." That is not the proper test. Held against the Federal Rules, Williams' complaint correctly joins multiple defendants and claims. The relief he seeks relates to the same series of transactions and occurrences, and the claims raise common questions of law and fact. There is no doubting that joinder would have been proper here were Williams not a prisoner; nothing in the PLRA suggests that it is any less proper simply because Williams is incarcerated.

What is more, the district court's cramped view of joinder would have the perverse effect of requiring prisoners to file *more* lawsuits. The very purpose of the PLRA is to reduce the number of lawsuits filed by prisoners. And the district court is not alone in this Circuit: more than 750 district court opinions have cited to the Seventh Circuit's opinion in *George*; many of those courts—like the court below here—have been led

astray into overly narrow conceptions of joinder.<sup>1</sup> It is thus important for this Court to articulate that the Rule 18 and 20 joinder principles apply no differently to incarcerated litigants.

**Second**, if, contrary to our submission, Williams *did* misjoin parties in this action, the court below had no authority to dismiss the complaint in its entirety. Federal Rule of Civil Procedure 21 unequivocally states that “[m]isjoinder of parties is not a ground for dismissing an action.” The district court’s dismissal of Williams’s suit on the basis of misjoinder is squarely inconsistent with Rule 21’s categorical prohibition of that sanction. Instead, when a prisoner (or any other litigant) misjoins parties or claims in a single suit, a court may either sever the complaint into different suits or—at most—dismiss limited parties to correct the misjoinder.

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<sup>1</sup> Westlaw reports that *George* has been cited at least 755 times in the district courts of this Circuit. Because prisoner suits often go unreported, this is likely a drastic under-representation of *George*’s full impact. For a highly limited smattering of these opinions, see *Rose v. Montana*, 2010 WL 3724794 (D. Mont. 2010); *Solomon v. Negrete*, 2010 WL 3958709 (E.D. Cal. 2010); *Lopez v. Schwarzenegger*, 2010 WL 3943683 (E.D. Cal. 2010); *Smith v. Yates*, 2009 WL 5029577 (E.D. Cal. 2009); *Avila v. Cate*, 2009 WL 5029827 (E.D. Cal. 2009); *Quezada v. Gricewich*, 2009 WL 1211369 (E.D. Cal. 2009); *Sevilla v. Terhune*, 2009 WL 1211393 (E.D. Cal. 2009); *Demerson v. Warden of SATF*, 2009 WL 1211396 (E.D. Cal. 2009); *Wright v. Gonzales*, 2009 WL 1297070 (E.D. Cal. 2009).

## STANDARD OF REVIEW

This Court reviews *de novo* a district court's dismissal pursuant to the PLRA screening mechanism, 28 U.S.C. § 1915A. See *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000).

## ARGUMENT

### I. THE COMPLAINT PROPERLY JOINS PARTIES AND CLAIMS.

#### A. The Federal Rules Of Civil Procedure Control Joinder Of Parties And Claims For All Litigants, Including Prisoners.

The Federal Rules of Civil Procedure, which place an emphasis on the efficient resolution of disputes, plainly delineate what defendants and claims may be joined in a single lawsuit. The question of joinder in this case—as in every other federal civil suit—begins and ends with the text of the Federal Rules. Nothing in the Seventh Circuit's decision of *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007), is to the contrary. There is no basis to conclude that the PLRA somehow narrows joinder standards.

1. *The Federal Rules encourage expansive joinder of parties and claims.*

Rule 20 controls the joinder of multiple defendants in a single lawsuit. A plaintiff may join multiple defendants when (1) the relief sought is joint or several, or if the relief sought is “with respect to or arising out of

the same transaction, occurrence, or series of transactions or occurrences” and (2) a common question of law or fact will arise. Fed. R. Civ. P. 20(a)(2). See *Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir. 1980); *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997) (joinder rule for multiple plaintiffs). The rule specifically holds that “[n]either a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded.” Fed. R. Civ. P. 20(a)(3).

This Court has long explained that Rule 20 “is to be construed liberally in order to promote trial convenience and to expedite the final determination of disputes, thereby preventing multiple lawsuits.” *League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977). Indeed, this direction is mandated by the Supreme Court’s guidance that, “[u]nder the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.” *United Mine Workers v. Gibbs*, 383 U.S. 715, 724 (1966). See also *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 509 (1959) (observing “the liberal joinder provisions of the Federal Rules”).<sup>2</sup>

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<sup>2</sup> Courts often interpret Rule 20’s “transaction” and “occurrence” language by reference to Rule 13(a), which requires compulsory counterclaims for claims likewise arising out of the same transaction or occurrence. See,

Rule 18 controls the scope of claims that may be joined in a single action: “A party asserting a claim \* \* \* may join, as independent or alternative claims, as many claims as it has against an opposing party.” Fed. R. Civ. P. 18(a). This rule, the Court has found, “provide[s] for a liberal joinder of claims.” *United States v. United Pac. Ins. Co.*, 472 F.2d 792, 794 n.5 (9th Cir. 1973). *See also Hunter v. United Van Lines*, 746 F.2d 635, 650 n.9 (9th Cir. 1984) (“Rule 18 \* \* \* permits a plaintiff to join against a defendant all claims over which the court has jurisdiction.”).

Not only *may* a party join claims against parties in a single lawsuit, but in many settings a party *must*. It is elementary that “[r]es judicata bars both claims actually litigated and those that arise from the same transaction and *could have been* litigated in a prior proceeding.” *W. Sys., Inc. v. Ulloa*, 958 F.2d 864, 868 (9th Cir. 1992). Thus a party must join all claims against a defendant that relate to the “series of connected transactions[] out of which the action arose.” Restatement (Second) of Judgments

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*e.g.*, *Mosley v. Gen. Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir. 1974). In the Rule 13(a) context, the Supreme Court has broadly interpreted “transaction,” finding that “[t]ransaction’ is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship.” *Moore v. N.Y. Cotton Exch.*, 270 U.S. 593, 610 (1926). Like Rule 20, this is “designed to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters.” *Southern Construction Co. v. Pickard*, 371 U.S. 57, 60 (1962).

§ 24(1) (1982). When courts apply *res judicata* in later proceedings, “[i]t is immaterial whether the claims asserted subsequent to the judgment were actually pursued in the action that led to the judgment; rather, the relevant inquiry is whether they could have been brought.” *Tahoe Sierra Preservation Council, Inc. v. Tahoe Reg’l Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003) (quoting *United States ex rel. Barajas v. Northrop Corp.*, 147 F.3d 905, 909 (9th Cir. 1998)). Thus a party not only *may*, but arguably *must*, join multiple defendants and multiple claims when the relief sought relates to the same “series of transactions or occurrences” and common issues of law or fact will arise.

2. *The Seventh Circuit’s decision in George v. Smith is not to the contrary.*

With respect to the Seventh Circuit’s decision in *George v. Smith*, 507 F.3d at 607, two points are worth noting. First, *George*’s discussion of joinder is dicta. In *George*, a prison inmate sued 24 different defendants, raising approximately 50 claims. 507 F.3d at 607. The district court dismissed some of the prisoner’s claims on the pleadings, and granted summary judgment against the prisoner on the others. *Id.* at 606. It was *this* resolution of the claims that the Seventh Circuit affirmed. *Id.* at 610. Although the court suggested that the complaint was an instance of inappro-

priate joinder, this discussion was neither necessary to nor a component of the actual holding of the case.<sup>3</sup>

Second, *George* accords with our contention that the Federal Rules alone control joinder for incarcerated litigants. *George* identified the “controlling principle” for claim joinder as Federal Rule 18. 507 F.3d at 607. It likewise quoted Rule 20 for party joinder. *Id.* The court correctly concluded that a “buckshot complaint that would be rejected if filed by a free person \* \* \* should be rejected if filed by a prisoner.” *Id.* See *Granger v. Rauch*, 388 Fed. App’x 537, 540 (7th Cir. 2010) (noting that *George* “recognizes that prisoners are subject to the same joinder rules as other civil litigants”). Because *George* focuses on the term “related” and because *George* provides policy rationale that could suggest more limited joinder standards for incarcerated prisoners, it appears that some courts—including

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<sup>3</sup> The Seventh Circuit itself has expressly acknowledged that an accompanying portion of the opinion is dicta. In *George*, the court opined that when “a prisoner does file a multi-claim, multi-defendant suit, the district court should evaluate each claim for the purpose of § 1915(g)”; therefore “when *any claim* in a complaint” is frivolous, the plaintiff “incur[s] strikes.” *George*, 507 F.3d at 607-08 (quotation omitted). In *Turley v. Gaetz*, 625 F.3d 1005, 1012 (7th Cir. 2010), the Seventh Circuit backpeddled from this analysis, noting “contrary precedent then existing in our sister circuits,” and finding the discussion “dicta,” which “regrettably \* \* \* has caused confusion among the district courts.” *Ibid.* Instead, the court “conclude[d] that the dismissal of an action, in part for failure to exhaust and in part as frivolous, malicious or for failure to state a claim does not constitute a strike under § 1915(g).” *Id.* at 1013.

the district court here—have read *George* more broadly than it supports. But *George* clearly and correctly identifies that joinder principles for prisoners are no different than any other litigant.

3. *The PLRA does not modify joinder standards.*

Any suggestion that the PLRA narrows joinder standards for incarcerated litigants is incorrect. With respect to party and claim joinder, prisoners play by the same rules as all other plaintiffs.

To begin, nothing in the text of the PLRA lends support to a narrowing of joinder. If Congress had intended to alter joinder standards for incarcerated litigants, it would have done so explicitly. *See Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662 (2007) (“[R]epeals by implication are not favored and will not be presumed unless the intention of the legislature to repeal is clear and manifest.” (quotation & alterations omitted)). The courts may not limit prisoner suits through judicial gloss. *See Jones v. Bock*, 549 U.S. 199, 217 (2007) (rejecting a judicially-constructed limitation because the “procedural rule lacks a textual basis in the PLRA”). In short, courts may not “adopt[] different and more onerous pleading rules to deal with particular categories of cases.” *Id.* at

224. That must “be done through established rulemaking procedures, and not on a case-by-case basis by the courts.” *Id.*<sup>4</sup>

While interpreting the PLRA, the Supreme Court has already cautioned that the Act should not be viewed as displacing the generally applicable Federal Rules of Civil Procedure. For example, the Court concluded that “the PLRA’s screening requirement does not—explicitly or implicitly—justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself.” *Jones*, 549 U.S. at 214. Thus, where the PLRA “is silent” on an issue, “[t]his is strong evidence that the usual practice,” particularly a “usual practice under the Federal Rules,” “should be followed.” *Id.* at 212. And “perceived policy concerns” likewise do not provide a basis for a court to “depart from the usual practice under the Federal Rules.” *Id.*

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<sup>4</sup> Several courts have held that the PLRA does not alter Rule 20 with respect to joinder of multiple *plaintiffs* in one action, thus permitting multiple prisoners to file a single lawsuit. *See Hagan v. Rogers*, 570 F.3d 146, 156 (3d Cir. 2009) (“[T]he PLRA did not repeal Rule 20 joinder as to IFP prisoner litigants.”); *Boriboune v. Berge*, 391 F.3d 852, 855 (7th Cir. 2004) (“Because the PLRA does not repeal or modify Rule 20, district courts must accept complaints filed by multiple prisoners if the criteria of permissive joinder are satisfied.”); *In re Prison Litig. Reform Act*, 105 F.3d 1131, 1137-38 (6th Cir. 1997) (administrative order). *But see Hubbard v. Haley*, 262 F.3d 1194 (11th Cir. 2001). There is even less reason to conclude that the PLRA alters joinder of defendants.

Moreover, any narrowing of joinder rules for incarcerated litigants is utterly at odds with the policies embodied in the PLRA. The broad joinder principles created by the Federal Rules are designed to “prevent multiple lawsuits.” *League to Save Lake Tahoe*, 558 F.2d at 917. Any narrowing of the ability of incarcerated litigants to join parties and claims would encourage prisoners to file *more* lawsuits, which—even if each individual action is smaller—will create a greater burden on the courts in the aggregate. This cannot be reconciled with the PLRA, the very purpose of which is “to reduce the quantity of prisoner suits.” *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (quotation & alteration omitted); *see also id.* at 91 n.2 (“Congress’s purpose” in enacting the PLRA was to “address[] a flood of prisoner litigation in the federal courts.”); *Jones*, 549 U.S. at 202 (The PLRA is “an effort to address the large number of prisoner complaints filed in federal court.”). Indeed, the Supreme Court has *expressly rejected* interpreting the PLRA in a manner that would encourage inmates to “file various claims in separate suits,” finding that this “would certainly not comport with the purpose of the PLRA to reduce the quantity of inmate suits.” *Jones*, 549 U.S. at 223. So too here.

## **B. The District Court Erred In Finding Misjoinder.**

The district court erred because it failed to measure Williams’ complaint against the Federal Rules. Although the court made reference to the rules, the court focused on an ill-defined inquiry as to whether the claims are sufficiently “related.” ER31. The district court cited the Seventh Circuit’s language that “[u]nrelated claims against different defendants belong in different suits.” ER31 (quoting *George*, 507 F.3d at 607).<sup>5</sup> But the court did not consider whether the relief Williams seeks arises from a “series of transactions or occurrences,” nor did it consider whether there were any common questions of law or fact. Although the court relied on *George*, nothing about this complaint is even remotely similar to *George*—there the claims apparently shared no logical relationship; here, the claims are intimately intertwined.

When considered under the well-traveled standard created by the Federal Rules, it is evident that Williams’ complaint appropriately joins parties and claims. He seeks relief for a series of transactions or occurrences all relating to the same underlying conspiracy, and all alleging parallel conduct. Joinder of such claims lies in the heartland of the Federal

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<sup>5</sup> To be sure, there is nothing inherently wrong with viewing joinder as requiring “relatedness” in parties and claims, but the Federal Rules provide a clear test to define what constitutes “relatedness” in this context.

Rules. Likewise, his claims will necessitate resolution of several common questions of law and fact. *See Desert Empire Bank*, 623 F.2d at 1375.

1. *The claims arise out of the same series of transactions and occurrences.*

The first prong of party joinder requires that the claims asserted will relate to the same transaction, occurrence, or series thereof. This is to ensure “similarity in the factual background” of the claims alleged. *Coughlin*, 130 F.3d at 1350.

The relief sought here relates to a single series of transactions and occurrences. Williams seeks relief for a series of occurrences of abuse and harassment by defendants, all of which Williams alleges were part of the same conspiracy. The manifestations of the conspiracy occurred over a roughly six-month period of time. The individual acts featured the same recurring defendants, they all were motivated by the same retaliation and discrimination, and they were enabled by the “code of silence” conspiracy among the defendants. Such allegations are precisely the sort of “systematic pattern of events” that Rule 20 envisions joined in a single lawsuit. *Coughlin*, 130 F.3d at 1350.

Courts routinely recognize that cases arising from a “pattern and practice” of behavior, such as discrimination, are properly joined under Rule 20. In *Mosley v. General Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir.

1974)—a case regarded as leading on the question of Rule 20 joinder—the Eighth Circuit found claims brought by ten employees who alleged that they “had been injured by the same general policy of discrimination” were properly joined in one action. Allegations that individual acts of discrimination arise out of “a company-wide policy” make the incidents part of the same series of transactions or occurrences for purposes of Rule 20. *Id.* at 1333-34. So too here; the pattern of abuse Williams asserts constitutes the same series of transactions or occurrences.

2. *The claims require resolution of common questions of law and fact.*

Several common questions of both law and fact are raised by the claims in this suit.

a. Questions of Fact. Williams’ claims necessitate the resolution of several overlapping factual issues, including:

- Whether the defendants conspired to harass Williams because of his prior legal grievances.
- Whether the defendants conspired to harass Williams on the basis of his psychiatric disability.
- Whether the defendants conspired to create a “code of silence” to enable harassment of prisoners, including Williams, at CSPA.

- Whether Dr. Kellaher witnessed defendants committing acts of harassment and abuse against Williams.
- Whether the defendants met in January and/or February 2007 to discuss retaliation against Williams.
- Whether Williams was injured as a result of these acts of harassment and abuse.

Permissive joinder of parties and claims is uniquely appropriate when a plaintiff alleges that defendants engaged in a systematic policy that resulted in different, recurring harms. *See Coughlin*, 130 F.3d at 1350-51.

b. Questions of law. Likewise, several common questions of law will be raised in this case:

- The relevant legal standard for conspiracy and whether the facts here demonstrate a conspiracy.
- The appropriate legal standard for retaliation.
- The correct legal standard for deliberate indifference to a serious medical need.

Any one of these common issues of law or fact would suffice for purposes of Rule 20. Taken together, there can be no doubt that the claims Williams asserts in his complaint belong in a single federal suit.

\* \* \* \*

Rules 18 and 20 define permissible joinder of parties and claims. The Federal Rules are an “impulse \* \* \* toward entertaining the broadest possible scope of action consistent with fairness to the parties.” *United Mine Workers*, 383 U.S. at 724. For purposes of efficiency, “joinder of claims, parties and remedies is strongly encouraged.” *Id.* That is precisely what Williams has done here. He has combined claims relating to the same underlying factual situation, claims that will raise common legal and factual issues. Williams’ complaint is appropriate under the Federal Rules. Any rule to the contrary will simply result in more prisoner lawsuits, an unproductive result for all involved.

## **II. MISJOINDER IS NOT A BASIS TO DISMISS.**

The district court, in adopting *George*, erred on a second count: when a plaintiff misjoins claims or parties, the remedy is not to dismiss of the action, but to sever the misjoined claims or parties (or, potentially, to dismiss the misjoined party or parties without prejudice). But here, the district court concluded that the “plaintiff may not proceed with these unrelated claims regarding different defendants in this action” and dismissed the complaint on that basis alone. ER31.

Federal Rule of Civil Procedure 21 expressly provides that “[m]isjoinder of parties is not a ground for dismissing an action.” There

can be no debate on this point; it is well settled that misjoinder itself does not support dismissal. *See, e.g., Acevedo v. Allsup's Convenience Stores, Inc.*, 600 F.3d 516, 520 (5th Cir. 2010) (“[T]he district court violated Rule 21 by dismissing the claims of all plaintiffs.”); *DirectTV, Inc. v. Leto*, 467 F.3d 842, 845 (3d Cir. 2006) (“To remedy misjoinder \* \* \* a court may not simply dismiss a suit altogether.”); *Clay v. Martin*, 509 F.2d 109, 113 (2d Cir. 1975) (“[T]he presence of ‘improper parties’ was \* \* \* an invalid basis for dismissal of the complaint. Misjoinder, if any, does not justify such an extreme sanction.”); *DIRECTV, Inc. v. Collins*, 244 F.R.D. 408, 411 (S.D. Ohio 2007) (“Rule 21 indicates that misjoinder is not grounds for dismissal.”); *Glendora v. Malone*, 917 F. Supp. 224, 227 n.3 (S.D.N.Y. 1996) (“[M]isjoinder is not grounds for dismissal of the entire action.”).

Instead, a court may either (1) “sever any claim against a party” or (2) “[o]n motion or on its own, \* \* \* on just terms, add or drop a party.” Fed. R. Civ. P. 21. *See also Coughlin*, 130 F.3d at 1350 (“If the test for permissive joinder is not satisfied, a court, in its discretion, may sever the misjoined parties, so long as no substantial right will be prejudiced by the severance.”); *Leto*, 467 F.3d at 845 (“[T]he court has two remedial options: (1) misjoined parties may be dropped on such terms as are just; or (2) any

claims against misjoined parties may be severed and proceeded with separately.” (quotation omitted)).

Given Rule 21’s requirement that a court act “on just terms,” the district court must take care to arrive at a result that is equitable for the litigants, mindful particularly of consequences for statutes of limitations. In *Elmore v. Henderson*, 227 F.3d 1009, 1012 (7th Cir. 2000), for example, Judge Posner explained that a court is “duty-bound to prevent” adverse consequences, like a lapsed statute of limitations, when it fashions a Rule 21 remedy. In *Strandlund v. Hawley*, 532 F.3d 741, 745-46 (8th Cir. 2008), where the statute of limitations would have lapsed, the Eighth Circuit followed Judge Posner’s direction, vacated a Rule 21 dismissal of a party, and remanded with the direction that the court sever rather than dismiss the party.<sup>6</sup>

In sum, outright dismissal of the complaint runs directly contrary to the Federal Rules. If, contrary to our submission, this Court were to conclude that Williams misjoined parties or claims, it should nonetheless re-

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<sup>6</sup> The court’s sensitivity to the consequences of dismissal should be especially acute where a plaintiff is *pro se*, as a court has “a duty to construe *pro se* pleadings liberally,” a “rule” which “particularly applies to complaints and motions filed by *pro se* prisoners.” *Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001) (quotation & alteration omitted).

verse dismissal of the complaint and remand to the district court for an appropriate Rule 21 remedy.

### **CONCLUSION**

For the foregoing reasons, the district court's order dismissing William's complaint pursuant to 28 U.S.C. § 1915A should be reversed and the matter remanded to the district court for further proceedings.

## REQUEST FOR ORAL ARGUMENT

Appellant John Wesley Williams respectfully requests oral argument.

Respectfully submitted,

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DATE: March 15, 2011

**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)**

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned counsel for appellant John Wesley Williams certifies that this brief:

(i) complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,066 words, including footnotes and excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6).

/s/ Paul W. Hughes

**CERTIFICATE OF SERVICE**

I certify that on this 15th day of March 2011, I served the foregoing Appellant's Replacement Brief via the Court's ECF system upon:

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