SUPREME COURT OF THE UNITED STATES

No. 05–416

JEANNE S. WOODFORD, ET AL., PETITIONERS *v.*
VIET MIKE NGO

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

[June 22, 2006]

JUSTICE BREYER, concurring in the judgment.

I agree with the Court that, in enacting the Prison Litigation Reform Act (PLRA), 42 U. S. C. §1997e(a), Congress intended the term "exhausted" to "mean what the term means in administrative law, where exhaustion means proper exhaustion." *Ante*, at 11. I do not believe that Congress desired a system in which prisoners could elect to bypass prison grievance systems without consequences. Administrative law, however, contains well established exceptions to exhaustion. See *Sims* v. *Apfel,* 530 U. S. 103, 115 (2000) (BREYER, J., joined by Rehnquist, C. J., and SCALIA and KENNEDY, JJ., dissenting) (constitutional claims); *Shalala* v. *Illinois Council on Long Term Care, Inc.,* 529 U. S. 1, 13 (2000) (futility); *McKart* v. *United States,* 395 U. S. 185, 197–201 (1969) (hardship); *McCarthy* v. *Madigan,* 503 U. S. 140, 147–148 (1992) (inadequate or unavailable administrative remedies); see generally II R. Pierce, Administrative Law Treatise §15 (4th ed. 2002). Moreover, habeas corpus law, which contains an exhaustion requirement that is "substantively similar" to administrative law's and which informs the Court's opinion, *ante*, at 9-10, also permits a number of exceptions. See *post*, at 5, n. 5 (STEVENS, J., dissenting) (noting that habeas corpus law permits "petitioners to overcome procedural defaults if they can show that the procedural rule is not firmly established

and regularly followed, if they can demonstrate cause and prejudice to overcome a procedural default, or if enforcing the procedural default rule would result in a miscarriage of justice" (citations omitted)).

At least two Circuits that have interpreted the statute in a manner similar to that which the Court today adopts have concluded that the PLRA's proper exhaustion requirement is not absolute. See *Spruill* v. *Gillis*, 372 F. 3d 218, 232 (CA3 2004); *Giano* v. *Goord*, 380 F. 3d 670, 677 (CA2 2004). In my view, on remand, the lower court should similarly consider any challenges that petitioner may have concerning whether his case falls into a traditional exception that the statute implicitly incorporates.