No. 17-779

IN THE

Supreme Court of the United States

JASON PARKER,

Petitioner,

v.

MONTGOMERY COUNTY CORRECTIONAL FACILITY/BUSINESS OFFICE MANAGER, ET AL.,

Respondents.

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

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

JEFFREY T. GREEN
CO-CHAIR, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AMICUS COMMITTEE
1660 L Street, N.W.
Washington, D.C. 20036
(202) 872-8600

CLIFFORD W. BERLOW
Counsel of Record
NATHANIEL K.S. WACKMAN
EDWARD P. VRTIS
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
(312) 840-7366
cberlow@jenner.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

OTHER AUTHORITIES

141 Cong. Rec. S7526 (daily ed. May 25, 1995) 6, 8

E. Ann Carson & Elizabeth Anderson, Bureau of Justice Statistics, U.S. Department of Justice, NCJ 250229, Bulletin, *Prisoners in 2015* (2016) 4

Federal Judicial Center, Federal Court Cases: Integrated Database, https://www.fjc.gov/research/idb/interactive/IDB-civil-since-1988 (last visited Dec. 17, 2017) 6, 11

Danielle Kaeble & Lauren Glaze, U.S. Department of Justice, Bulletin, *Correctional Populations in the United States, 2015* (2016), https://www.bjs.gov/content/pub/pdf/cpus15.pdf 4, 11

Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175 (1989) 7

INTEREST OF THE *AMICUS CURIAE* [1]

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit, voluntary bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of a crime or misconduct.

NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice.

NACDL files numerous *amicus* briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide *amicus* assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. In particular, in furtherance of NACDL's mission to safeguard fundamental constitutional rights, NACDL frequently appears as *amicus* in cases involving prisoners' access to courts.

---

[1] In accordance with Supreme Court Rule 37, *amicus curiae* states that no counsel for a party authored this brief, in whole or part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person other than the *amicus curiae*, its members, and its counsel made any monetary contribution to its preparation and submission. Counsel of record for the parties have received timely notice of the intent to file this brief and have consented to its filing.

SUMMARY OF THE ARGUMENT

In this case, the Third Circuit held that 28 U.S.C. §1915(g) bars a prisoner from proceeding *in forma pauperis* when appealing the dismissal of a civil suit if that dismissal was the prisoner's "third strike." Pet. App. 3a-4a. As the Petition explains, that holding warrants this Court's review both because it deepens a square conflict of authority and because it is wrong as a matter of statutory interpretation. But the Third Circuit's decision warrants review for an additional reason: it runs counter to the axiom that a party who loses in the trial court will have the opportunity to be heard, at least once more, on appeal. It does so in ways that raise significant constitutional questions, and in cases that present important issues of constitutional magnitude.

That unjust consequence is the unavoidable result of the Third Circuit's decision. For the vast majority of our Nation's prisoners, accessing the courts is all but impossible without *in forma pauperis* status. Preventing prisoners from appealing *in forma pauperis* third strike dismissals, thus, is tantamount to denying them *any* appellate review. But appellate review is so fundamental to our justice system that if Congress intended section 1915(g) to yield such a result then it surely would have said so. The Third Circuit, thus, reached its holding *not only* in the face of statutory and congressional silence, but also over the repeated pronouncements of this Court that section 1915's express purpose is not to indiscriminately cull *pro se* prisoners from the ranks of federal plaintiffs, but to *facilitate* the review of meritorious prisoner claims.

The need for this Court's review of this question is acute. Over 700,000 prisoners—a population accounting for almost 40% of prisoners' civil rights and prison conditions claims filed nationwide—are incarcerated in the States affected by the split of authority that the Petition highlights. And wrongful dismissals that count as strikes are sufficiently common that this Court simply cannot presume that the Third Circuit's rule will be without consequence. To the contrary, it is unavoidable that effectively preventing prisoners from appealing third strikes will result in erroneous deprivations of constitutional protections. Further, the Third Circuit's decision creates a profound tension with this Court's decision in *Coleman* v. *Tollefson*, 135 S. Ct. 1759 (2015) which plainly contemplates appellate review of third strikes.

The Petition for a writ of certiorari should be granted.

ARGUMENT

I. This Case Presents An Important And Recurring Question Regarding The Proper Interpretation Of 28 U.S.C. §1915(g).

The American legal system is "committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law." *Jones* v. *Bock*, 549 U.S. 199, 203 (2007). The ability of prisoners to proceed *in forma pauperis*—both initially in the district court and then on appeal—is a critical part of that commitment. The Third Circuit's conclusion here undermines that commitment in two respects. First, the Third Circuit's rule runs afoul of a basic principle of

American judicial review: that the losing party in the district court will live to fight another day. Second, the Third Circuit's rule presents a pressing constitutional question about the ability of indigent prisoners to access the courts.

A. Review Is Warranted Because The Vast Majority Of The Nation's Prisoners Depend On The Federal *In Forma Pauperis* Statute To Access The Courts.

Some 2.1 million people are incarcerated in the Nation's correctional facilities. See Danielle Kaeble & Lauren Glaze, U.S. Dep't of Justice, Bulletin, *Correctional Populations in the United States, 2015*, at 12-13 app. tbl.1 (2016), https://www.bjs.gov/content/pub/pdf/cpus15.pdf. As of December 2015, "1% of adult males living in the United States were serving prison sentences of greater than 1 year." E. Ann Carson & Elizabeth Anderson, Bureau of Justice Statistics, U.S. Dep't of Justice, NCJ 250229, Bulletin, *Prisoners in 2015*, at 8 (2016). Further, "60% of the people in prison today are people of color," where "[b]lack men are nearly six times as likely to be incarcerated as white men" and "Hispanic men are 2.3 times as likely" to be imprisoned. The Sentencing Project, *Fact Sheet: Trends in U.S. Corrections*, at 5 (June 2017).

All of these "[p]risoners retain the essence of human dignity inherent in all persons." *Brown* v. *Plata*, 563 U.S. 493, 510 (2011). That "animat[ing]" principle has shaped the judiciary's "responsibility" to safeguard those prisoners' dignity by "not shrink[ing] from [its] obligation to enforce the constitutional rights of all persons, including [those of] prisoners." *Id.* at 510-11

(internal quotation marks omitted). Federal courts thus "presume that * * * Congress did not leave prisoners without a remedy for violations of their constitutional rights." *Id.* at 526.

To vindicate constitutional protections, the vast majority of the Nation's prisoners depend on 28 U.S.C. §1915, which governs *in forma pauperis* proceedings. See *Rowland* v. *Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201 n.4 (1993) (acknowledging that "the 'overwhelming majority'" of cases filed by prisoners proceed *in forma pauperis*).[2] To be sure, 28 U.S.C. §1915(g) provides that a prisoner "shall" not "bring a civil action or appeal a judgment in a civil action" *in forma pauperis* "if the prisoner has, on 3 or more prior occasions, * * * brought an action or appeal * * * that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." But as this Court explained in *Jones*, the purpose of the Prison Litigation Reform Act ("PLRA") is "to filter out the bad claims and facilitate consideration of the good." 549 U.S. at 204.

---

[2] See, e.g., U.S. Courts, Table B-19, U.S. Courts of Appeals—Pro Se Cases Commenced, by Source, During the 12-Month Periods Ending September 30, 2013 and 2014 (2014), http://www.uscourts.gov/sites/default/files/statistics_import_dir/B19Sep14.pdf (detailing that 15,180 actions by prisoners filed in the courts of appeals, 13,666 were filed pro se).

This is an important assurance. In 2016 alone, prisoners filed 28,981 cases alleging violations of their civil rights or unconstitutional conditions.[3]

It is difficult to square the vital role section 1915 plays in ensuring that prisoners' meritorious claims are heard with the Third Circuit's conclusion that section 1915(g) "den[ies] a prisoner [*in forma pauperis*] status for, and therefore effectively bar[s] appellate review of, [a] District Court's imposition of the prisoner's third strike." Pet. App. 13a. Indeed, this apparent disconnect between Congress's purpose, e.g., 141 Cong. Rec. S7526 (daily ed. May 25, 1995), this Court's oft-repeated references to the same end, e.g., *Jones*, 549 U.S. at 203-04, and the Third Circuit's understanding of the purpose of section 1915(g) alone is a sufficient reason for this Court to grant the Petition for a writ of certiorari.

B. Review Is Warranted Because The Third Circuit's Decision Cuts Off Access To Appellate Review Without A Clear Directive From Congress.

Because the vast majority of prisoners are indigent, the Third Circuit's ruling regarding the statutory three strikes limitation on *in forma pauperis* appeals creates a substantial barrier for many prisoners seeking access to the courts. That threatens a foundational premise of our legal system: that a party who loses in the district court will have the opportunity to seek appellate review. Though Congress is largely free to regulate access to the

---

[3] See Fed. Judicial Ctr., Federal Court Cases: Integrated Database, https://www.fjc.gov/research/idb/interactive/IDB-civil-since-1988 (last visited Dec. 17, 2017).

courts, but see *infra* Part I.C, this basic principle manifests itself in a strong presumption favoring appellate review. See 28 U.S.C. §1291. After all, "where Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear." *Demore* v. *Kim*, 538 U.S. 510, 517 (2003) (internal citations omitted).

This rule of construction makes good sense. Appellate courts lay down firm rules—applying across cases—by which people and businesses may structure their affairs. See Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1179 (1989). They also correct erroneous adjudications by the lower courts. See *Griffin* v. *Illinois*, 351 U.S. 12, 18 (1956); see also *Parker* v. *Dugger*, 498 U.S. 308, 321 (1991) ("We have emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the death penalty is not imposed arbitrarily or irrationally."). These principles explain why this Court has declared it "unthinkable" that a statute would permit a "single judge" to enter "judgment" in a case "without" the possibility of "review of the relief granted or denied." *United States* v. *E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 324-25 (1961) (quoting *Hartford-Empire Co.* v. *United States*, 324 U.S. 570, 571 (1945)) (internal quotation marks omitted).

The Third Circuit's decision flouts this principle. The text of section 1915(g) lacks the requisite clear manifestation of congressional intent to foreclose meaningful appellate review of trial court judgments. Its legislative history too is devoid of any suggestion that Congress intended to dispense with the basic

presumption in favor of appellate review of final judgments, typified by section 1291's expressly broad grant of jurisdiction to decide such appeals. See, e.g., 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (statement of Sen. Kyl). Put simply, the Third Circuit's decision fails to square with the common-sense principle that if Congress intended to "effectively eliminate" the courts of appeals' "appellate function" with respect to the appeal of a third strike, "it would have clearly said so." See *Thompson* v. *DEA*, 492 F.3d 428, 432 (D.C. Cir. 2007).

Indeed, this aspect of the Third Circuit's decision conflicts with this Court's decision in *Coleman*. Although this Court held "that a prisoner who has accumulated three prior qualifying dismissals under section 1915(g) may not file an additional suit *in forma pauperis* while his appeal of one such dismissal is pending," it emphasized that the "risk" of an erroneous dismissal of a post third strike civil action did "not seem great" because "in some instances the prisoner will be able to refile his or her lawsuit after the reversal [of the third strike], seeking *in forma pauperis* status at that time." 135 S. Ct. at 1764-65. That safeguard is wholly illusory if, as the Third Circuit held, a prisoner has no meaningful opportunity to appeal.[4]

---

[4] In *Coleman*, this Court expressed concern that allowing *in forma pauperis* litigation while appeals of third strikes are pending "would produce a leaky filter," allowing a prisoner to continue to file frivolous claims even after the three strikes rule should apply. 135 S. Ct. at 1764. But as the Ninth Circuit explained in *Richey v. Dahne*, this concern is of no moment if proceeding *in forma*

C. Review Is Warranted Because The Third Circuit's Decision Raises New Constitutional Difficulties.

The Petition also should be granted because the Third Circuit's decision gives rise to serious constitutional difficulties. The Due Process and Equal Protection Clauses together guarantee that indigent litigants are "afford[ed] adequate and effective appellate review." *Griffin*, 351 U.S. at 20; see *Smith* v. *Bennett*, 365 U.S. 708, 709 (1961) (finding that imposing fees on an indigent prisoner wanting to "sue for his liberty" violates "equal protection of the laws"). Indeed, this Court "has unequivocally held that waiver of filing fees is in some cases constitutionally required," specifically for those claims implicating fundamental rights. *Thomas* v. *Holder*, 750 F.3d 899, 908 (D.C. Cir. 2014) (Tatel, J., concurring) (citing *Bennett*, 365 U.S. at 712; *Griffin*, 351 U.S. at 18-19); see *Wolff* v. *McDonnell*, 418 U.S. 539, 579 (1974) (stating that due process "assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights").

By holding that prisoners cannot challenge a third strike *in forma pauperis*, the Third Circuit created significant tension with that constitutional principle. Cases dismissed as third strikes often involve prisoners seeking to vindicate their fundamental constitutional rights. Yet the Third Circuit's decision creates a "prohibitive financial barrier" to bringing appeals from

---

pauperis is limited to an appeal of a third strike. 807 F.3d 1202, 1209 (9th Cir. 2015).

those dismissals. *Thomas*, 750 F.3d at 906 (Tatel, J., concurring) (internal quotation marks omitted). Because "[n]o Court ought, unless the terms of an act rendered it unavoidable, to give a construction to it which should involve a violation, however unintentional, of the constitution," *Parsons* v. *Bedford*, 28 U.S. 433, 448-49 (1830), it is important that this Court review the Third Circuit's construction of section 1915(g).

II. The Court Should Resolve The Question Presented Now And In This Case.

The Petition establishes that the question presented is the subject of a mature and acknowledged split of authority, which the Solicitor General already has addressed on behalf of the United States. Pet. at 10-15. Further, the Third Circuit's decision is in serious tension with basic principles favoring appellate review of trial court decisions and raises important constitutional concerns. See discussion *supra* Part I.

This Court's prompt review of the question presented is necessary for yet another reason: the existing split already is having a profound impact on many of the Nation's prisoners. This impact greatly jeopardizes the fair adjudication of numerous important constitutional claims.

A. A Substantial Portion Of The Nation's Prisoners Already Are Impacted By The Existing Split Of Authority.

As discussed above, proceeding *in forma pauperis* on appeal of a third strike is critical to protecting a prisoner's "meaningful access to the federal courts." See *Neitzke* v. *Williams*, 490 U.S. 319, 324 (1989). The

Petition correctly explains that meaningful access presently is lacking for prisoners in the Third Circuit, as well as the Seventh Circuit. Pet. at 15; see *Bryant* v. *Brin*, 621 F. App'x 859, 860 (7th Cir. 2015) (citing *Robinson* v. *Powell*, 297 F.3d 540, 541 (7th Cir. 2002)). In 2015, the States in the Third and Seventh Circuits accounted for over 12% of the Nation's prisoners (approximately 266,900).[5] Those prisoners filed more than 20% of the Nation's prisoner civil rights and prison conditions suits in the federal district courts.[6]

By contrast, the Ninth and Tenth Circuits have held that *in forma pauperis* status is available to prisoners during the appeal of their third strikes. And in 2015, the States in those circuits housed over 22% of the Nation's prisoners (approximately 472,000).[7] Furthermore, during FY 2016, prisoners in these circuits accounted for almost 20% of all prisoners' civil rights and prison conditions cases filed nationwide.[8]

Given that courts overseeing more than one-third of the Nation's prisoners already have addressed the question presented, this issue should not percolate any

---

[5] See Kaeble & Glaze, *supra* p. 4.

[6] See Fed. Judicial Ctr., *supra* note 3 (showing the total number of prisoners' civil rights and prison conditions cases filed nationwide (28,981) and in the district courts of the Third and Seventh Circuits (5,821) between October 1, 2015, and September 30, 2016).

[7] See Kaeble & Glaze, *supra* p. 4.

[8] See Fed. Judicial Ctr., *supra* note 3 (showing the total number of prisoners' civil rights and prison conditions cases filed in the district courts of the Ninth and Tenth Circuits (5,664) between October 1, 2015, and September 30, 2016).

further in the courts of appeals. The civil rights of over 700,000 prisoners already are affected by the split of authority presented by the Petition. This Court should grant review now to clarify the statutory and constitutional rights of these prisoners.

B. The Third Circuit's Resolution Of The Question Presented Will Deprive Prisoners With Meritorious Claims Of Meaningful Access To The Courts.

By effectively depriving prisoners of meaningful appellate review of third strike determinations, the Third Circuit has embraced a rule that threatens to "freeze out meritorious claims" and "ossify district court errors." *Adepegba* v. *Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). And errors in assessing strikes under section 1915(g) are not hard to find.

In a recent example, this Court in *Holt* v. *Hobbs* reversed a district court's decision, affirmed by the Eighth Circuit, that a Muslim prisoner failed to state a claim that a prison grooming policy prohibiting beards violated his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). 135 S. Ct. 853, 859-62, 867 (2015). In reversing, this Court explained that the district court "misunderstood the analysis that RLUIPA demands" in at least three different respects, and held that, far from failing to state a claim under RLUIPA, the prisoner's allegations were sufficient to establish that the prison's policy "violate[d]" the statute. *Id.* at 867. Notably, the district court had explicitly stated that the dismissal should count as a section 1915(g) strike. See *Holt* v. *Hobbs*, No. 5:11-cv-00164-BSM-JJV, 2012 WL 994481, at *1-2, *8 (E.D. Ark. Jan.

27, 2012), *report and recommendation adopted*, 2012 WL 993403, at *1 (E.D. Ark. Mar. 23, 2012).

Holt is hardly unique. Indeed, examples of wrongly assessed strikes span a wide array of fundamental areas of constitutional law:

1. Religious Freedom Cases

a. In *Williams* v. *Wilkinson*, 645 F. App'x 692, 702-05, 709-10 (10th Cir. 2016), the Tenth Circuit reversed the dismissal of RLUIPA and First Amendment claims where a Muslim prisoner was denied a kosher diet. Despite the clear teachings of *Holt* and the Tenth Circuit's decision in *Yellowbear* v. *Lampert*, 741 F.3d 48 (10th Cir. 2014) (Gorsuch, J.), the district court dismissed the suit as "frivolous" and imposed a strike under section 1915(g) because the court thought that the prisoner's "sincerely held religious belief" could just as easily have been satisfied by the halal diet the prison provided. *Williams*, 645 F. App'x at 696, 700; see also *Williams* v. *Wilkinson*, No. CIV 13-206-RAW-SPS, 2015 WL 1268270, at *3 (E.D. Okla. Mar. 19, 2015).

b. In *Wagner* v. *Campuzano*, 562 F. App'x 255, 255-56 (5th Cir. 2014) (per curiam), the Fifth Circuit reversed the dismissal of RLUIPA and First Amendment claims where a Christian prisoner alleged that inmates were not allowed to sing in choirs or play musical instruments during Christian religious services, even though another group was exempted from those bans. See also *Wagner* v. *Campuzano*, No. 1:12-cv-205-C ECF, 2013 WL 4851618, at *2 (N.D. Tex. Sept. 11, 2013). The district court had dismissed the claims as "frivolous"

and imposed a strike under section 1915(g). *Wagner*, 562 F. App'x at 256.

c. In *Robledo* v. *Leal*, 531 F. App'x 479, 479-80 (5th Cir. 2013) (per curiam), the Fifth Circuit reversed the dismissal of RLUIPA, First Amendment, and retaliation claims alleging that prisoners were strip searched while leaving Catholic services, in retaliation for their faith. The district court had dismissed the claims as "frivolous" and imposed a strike under section 1915(g). *Id.* at 480.

2. Free Speech Cases

a. In *Richey* v. *Dahne*, 807 F.3d 1202, 1204-06 & n.1 (9th Cir. 2015), the Ninth Circuit reversed the dismissal of a First Amendment retaliation claim where the prison staff failed to process a prisoner's grievances (about access to clean clothes and showers) because the staff objected to his description of the issues. In that case, the district court had held that the prisoner failed to state a claim. *Id.* at 1208. The reversed dismissal was the prisoner's third strike. *Id.* at 1204.

b. In *Walker* v. *Bertrand*, 40 F. App'x 988, 989-90 (7th Cir. 2002), the Seventh Circuit reversed dismissal of a First Amendment claim where a prisoner was placed in segregation on two separate occasions in retaliation for filing a grievance and a lawsuit. The district court had held that the prisoner failed to state a claim and assessed a strike under section 1915(g). *Id.* at 989.

3. Eighth Amendment And Due Process Cases

a. In *Womble* v. *Harvanek*, No. 17-7023, 2017 WL 6333936, at *1-2 (10th Cir. Dec. 12, 2017) (unpublished), the Tenth Circuit reversed the dismissal of a case where the prisoner complained that the temperature in his cell was regularly over 90 degrees, causing him to become "severely dehydrated" on three different occasions within a month. *Id.* at *1. Moreover, when the prisoner raised this complaint with prison officials, he was told to drink water that was "brown in color" and "often made [him] sick from drinking [it]." *Id.* The prisoner specifically alleged that he vomited "many times" from drinking the water. *Id.* The district court had dismissed the case for failing to state a claim and imposed a strike under section 1915(g). *Id.*

b. In *Ward* v. *Fisher*, 616 F. App'x 680, 682, 685 (5th Cir. 2015) (per curiam), the Fifth Circuit reversed the dismissal of a retaliation claim where a prisoner was transferred from one prison to another prison explicitly because he requested medical treatment for a bothersome skin condition. He was told by prison officials that if he continued to complain, he would be moved again. *Id.* at 682. The district court had dismissed the case for failing to state a claim and imposed a strike under section 1915(g). *Id.*

c. In *Dominguez* v. *Moore*, 149 F. App'x 281, 283-84 (5th Cir. 2005) (per curiam), the Fifth Circuit reversed the dismissal of a claim that prison guards retaliated against a prisoner by affixing his handcuffs so tight that the prisoner's hands became "grossly swollen," with "deep cuts" around his wrists. *Id.* The district court had

dismissed the case "for frivolity and for failure to state a claim." *Id.* at 282.

* * * *

Depriving prisoners of meaningful access to appellate review from third strike determinations will not only insulate the third strike judgment from appeal. Because there is no expiration date in section 1915(g) for strikes, a wrongly assessed third strike will also prevent, in perpetuity, a prisoner from filing *in forma pauperis* unless the prisoner can allege "imminent danger of serious physical injury." 28 U.S.C. §1915(g). But constitutional protections go far beyond that limited scenario. Thus, a wrongly assessed third strike would affect future meritorious suits by that prisoner.

As the above examples illustrate, mistakes happen. Properly read, section 1915(g) provides an avenue for indigent prisoners to seek correction of district court errors. But the Third Circuit's reading of section 1915(g) effectively eliminates that path. This Court should grant review of this issue now in order to ensure that indigent prisoners retain the ability to seek correction of erroneous third strikes.

CONCLUSION

For the foregoing reasons, as well as those expressed in the Petition, *amicus curiae* the National Association of Criminal Defense Lawyers urge this Court to grant the Petition for a writ of certiorari.

December 27, 2017

Respectfully submitted,

JEFFREY T. GREEN
CO-CHAIR, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AMICUS COMMITTEE
1660 L Street, N.W.
Washington, D.C. 20036
(202) 872-8600

CLIFFORD W. BERLOW
Counsel of Record
NATHANIEL K.S. WACKMAN
EDWARD P. VRTIS
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
(312) 840-7366
cberlow@jenner.com

Counsel for Amicus Curiae The National Association of Criminal Defense Lawyers