No. 26-5864

FILED
MAY 26 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

ROBERT ANNABEL, II — PETITIONER
(Your Name)

vs.

NORBERT FRONCZAK, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Annabel, II, #414234
(Your Name)

34625 26 Mile Road
(Address)

Lenox Township, Michigan 48048
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

I. Should the Fourth Court make an individual evaluation whether a prisoner Plaintiff's prior dismissals 'beyond doubt' fail to state a claim upon which relief could be granted, or were indisputably frivolous for purpose of the Prison Litigation Reform Act's 3-strikes provision, and to issue a binding published decision?

II. Applying the correct legal standards, should this Supreme Court overrule the Sixth Circuit Court of Appeals and the district court's erroneous holdings that Petitioner has strikes under the PLRA barring him from proceeding *in forma pauperis*?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Norbert Fronczak; Lawrence McKinney

RELATED CASES

Annabel v. Shirtz, 2:07-cv-30 (W.D.Mich.)

Annabel v. Michigan Department of Corrections, 1:14-cv-756 (W.D.Mich.)

Annabel v. Washington, 1:24-cv-97 (W.D.Mich.)

Annabel v. Novak, 22-1867 (6th. Cir.)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
☒ is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 5, 2026.

[ ] No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 23, 2026, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1915(g)

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.

STATEMENT OF CASE

A. Proceedings Below.

Petitioner Robert Annabel, II, #414234, is a prisoner of the Michigan Department of Corrections. He sought to file a complaint under 42 U.S.C. § 1983 for First Amendment claims that prison employees retaliated against him for protected conduct, and he requested to proceed *in forma pauperis* in the United States District Court for the Eastern District of Michigan. However, the district court denied the request to proceed *in forma pauperis* and dismissed the complaint without prejudice, holding that Plaintiff had four cases that counted as strikes under the Prison Litigation Reform Act (PLRA 28 U.S.C. § 1915(g)) that were frivolous or failed to state a claim upon which relief could be granted.

Petitioner then filed a motion for relief of judgment, pursuant to Federal Rule of Civil Procedure 60(b), asserting that the district court erred in counting the prior cases as strikes under the PLRA. The district court denied the Rule 60(b) motion. Petitioner filed a timely notice of appeal, but was again denied *in forma pauperis* (hereafter: *IFP*) by the district court. Petitioner then petitioned and filed a supporting brief for *IFP* in the United States Court of Appeals for the Sixth Circuit.

The Court of Appeals held that three of the cases

cited by the district court counted as PLRA strikes and denied *IFP* on appeal. Petitioner then filed a petition for panel rehearing and rehearing en banc in the Court of Appeals. Panel rehearing was denied on March 23, 2026. Rehearing en banc was denied on April 7, 2026. Petitioner now seeks a writ of certiorari from the Supreme Court of the United States.

B. Statement of Facts.

Petitioner filed his first federal action under 42 U.S.C. § 1983 in the year 2005, and has been a prolific litigant in filing nearly 20 federal actions and several appeals as of the appeal of this action in 2026—a span of 21 years. Although he has won several settlements, one judgment, and nearly 1/3 of the appeals he has filed, he remains insolvent due to unpaid debts and cannot afford to pay federal filing fees. However, he has pending two cases in the district court, a third he intends to appeal, and the case at bar for which *IFP* was denied.

The district court counted the following three cases and one appeal as PLRA strikes: (1) Annabel v. Shirtz, No. 2:07-cv-30, 2007 WL 1455913 (W.D.Mich. May 16, 2007); (2) Annabel v. Michigan Dep't of Corrections, No. 1:14-756, 2014 WL 4187675 (W.D.Mich. Aug. 21, 2014); (3) Annabel v.

Washington, No. 1:24-cv-97, 2024 WL 1108754 (W.D.Mich. Mar. 13, 2024), aff'd, No. 24-1425, 2024 WL 4766187 (6th Cir. Oct. 2, 2024), cert denied, No. 24-6524, 2025 WL 1020405 (U.S. Apr. 7, 2025); (4) Annabel v. Novak, No. 22-1867, 2023 U.S. App. LEXIS 19721 (6th Cir. May 2, 2023).

Petitioner argued to the Court of Appeals that he did not have 3 strikes. Although the Court of Appeals opinion seemed to agree by its omission that Annabel v. Michigan Dep't of Corrections, supra, did not qualify as a PLRA strike, it held that the other cases were PLRA strikes and denied *IFP* on appeal. The Court of Appeals denied a petition for panel rehearing and rehearing en banc.

Because the Court of Appeals published precedent holds that the "Fourth Judge" must make an independent assessment whether prior cases or appeals count as PLRA strikes, and that published Sixth Circuit precedents of PLRA interpretations have conflicted with published precedents of other Courts of Appeals and its rulings in Petitioner's *IFP* denied case—once again the Supreme Court must interpret the legislative intent behind the PLRA and whether the Sixth Circuit's definitions of "frivolous" and "failure to state a claim" conflict with existing Supreme Court precedent.

REASONS FOR GRANTING THE PETITION

I. Should the Fourth Court make an individual evaluation whether a prisoner Plaintiff's prior dismissals 'beyond doubt' fail to state a claim upon which relief could be granted, or were indisputably frivolous, for purpose of the Prison Litigation Reform Act's 3-strikes provision, and to issue a binding published decision?

Under the Prison Litigation Reform Act (PLRA) 28 U.S.C. § 1915(g), a federal court must deny a request to proceed *in forma pauperis* to a prisoner plaintiff who has on three prior occasions filed an action or appeal that was dismissed as frivolous, malicious, or failed to state a claim upon which relief could be granted.

> "This historical inquiry requires the latter court to independently evaluate whether the prior [lawsuits] were dismissed on one of the enumerated grounds and therefore count as strikes."

Simons v. Washington, 996 F.3d 350, 353 (6th Cir. 2021); Hill v. Madison County, Ill., 983 F.3d 904, 906 (7th Cir. 2020); Gonzalez v. United States, 23 F.4th 788, 790 (8th Cir. 2022). A denial of *IFP* on the grounds of three strikes may be appealed. Richey v. Dahne, 807 F.3d 1202, 1209 (9th Cir. 2015). "'Congress intended section 1915(g) only to penalize litigation that is truly frivolous, not to freeze out meritorious claims or ossify district court errors.'" Silva v. Di Vittorio, 658 F.3d 1090, 1100 (9th Cir. 2011)(citations omitted). Unpublished decisions, however,

are not binding on latter courts. See, Bell v. Johnson, 308 F.3d 594, 611 (6th Cir. 2001).

"The legal standard for dismissing a complaint for failure to state a claim pursuant to [28 U.S.C.] § 1915(e)(2)(B)(ii) and § 1915A(b)(1) is identical to the legal standard used when ruling on a [Fed. R. Civ. P.] Rule 12(b)(6) motion." Newton v. City of Wilmington, 206 F.Supp.3d 947, 991 (D.Del. 2016); Herrera v. Agents of Pa. Bd. of Prob., 132 F.4th 248, 254 n.5 (3rd Cir. 2025); Hodges v. Meletis, 109 F.4th 252, 259 (4th Cir. 2024).

> "Rather, the provisions of the *IFP* statute should be used to dismiss an action only when the claim is 'based on an indisputably meritless legal theory,' or where a complaint's factual contents are clearly baseless."

Wilson v. Yaklich, 148 F.3d 596, 600 (6th Cir. 1998). "A *pro se* plaintiff's complaint is held to an especially liberal standard, and should only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Herron v. Harrison, 203 F.3d 410, 414 (6th Cir. 2000)(quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). See also, Haines v. Kerner, 404 U.S. 519, 520-521 (1972)(same "beyond doubt" standard). "When considering a motion to dismiss pursuant to Rule 12(b)(6)... the trial court must accept all of the allegations in the complaint as true[.]" Id. 203 F.3d at 414. "And, of course, a well-pleaded complaint may proceed even if it strikes

a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" Bell Alantic Corp. v. Twombly, 550 U.S. 544, 556 (2007); Skinner v. Switzer, 562 U.S. 521, 529-530 (2011); Rose v. Saginaw County, 353 F.Supp.2d 900, 915 (E.D.Mich. 2005).

"[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations[.]" Bell Alantic Corp., 550 U.S. at 555. As explained in Skinner, 562 U.S. at 530:

> "but under the Federal Rules of Civil Procedure, a complaint need not pin plaintiff's claim for relief to a precise legal theory. Rule 8(a)(2) of the Federal Rules of Civil Procedure generally requires only a plausible 'short and plain' statement of the plaintiff's claim, not an expositation of his legal argument."

"[T]he plausibility standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 556 U.S. 663, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. "Plaintiff's allegations, liberally construed, should be viewed as

a whole, not as separate and isolated paragraphs." Merrit v. Hawk, 153 F.Supp.2d 1216, 1221 (D.Colo. 2001). See also, Ashcroft v. Iqbal, 556 U.S. at 698 (dissent by J. Souter joined by J.J. Stevens, Ginsburg, Breyer).

> "Under the liberal notice pleading rules, a complaint need only put a party on notice of the claim being asserted against it to satisfy the federal rule requirements of stating a claim upon which relief may be granted. ... A complaint need not anticipate every defense and accordingly need not plead every response to a potential defense."

Memphis, Tenn. Area Local., Am. Postal Workers Union v. City of Memphis, 361 F.3d 898, 902 (6th Cir. 2004); Arredondo v. Schlumberger, Ltd., 583 F.Supp.3d 783, 800 (W.D.Tex. 2022)("'a complaint need not outline all elements of a claim nor use any "magic words" to state a claim'").

> "'We believe this rule means that if the court can reasonably read the plaintiff to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authorities, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements.'"

Colebrook v. Thompson, 668 B.R. 156, 187 (6th Cir. 2025)(quoting Hall v. Bellman, 935 F.2d 1106, 1110 (10th Cir. 1991)). "And, as a general rule, a plaintiff's complaint need not expressly plead legal theories; it is sufficient to plead factual allegations that can establish a viable theory." Boshaw v. Midland Brewing Co., 32 F.4th 598, 606 (6th Cir. 2022); Fisher v. Roberts, 125 F.3d 974, 978 (6th Cir. 1997). "A plaintiff is not required to set forth a

legal theory to match the facts, so long as some legal theory can be sustained on the facts pleaded in the complaint." O'Grady v. Libertyville, 304 F.3d 719, 723 (7th Cir. 2002); Burton v. Kuchel, 865 F.Supp. 456, 461 (N.D.Ill. 1994). "[T]he complaint is not to be dismissed because the plaintiff has misconceived the proper theory of the claim, if he is entitled to any relief under any theory." Myers v. United States, 636 F.2d 166, 169 (6th Cir. 1981); Rose v. Saginaw County, 353 F.Supp.2d at 915.

> "[C]onstitutional rights can co-exist inside the walls of prison just as they do outside: prisoners, like all citizens, benefit from the protection of numerous enumerated constitutional rights, and these rights may sometimes overlap."

Henry v. Hulett, 969 F.3d 769, 780 (7th Cir. 2020); Smith v. State of Michigan, 256 F.Supp.2d 704, 705 (E.D.Mich. 2003).

"[U]nder notice pleading rules, it is for the parties to produce their evidence at trial." Black v. Lane, 22 F.3d 1395, 1400 (7th Cir. 1994). "Lower courts have sometimes tried to demand more information than Rule 8 requires for certain kinds of claims." Berk v. Choy, 607 U.S. 187, 188 (2026). In Lewis v. Casey, 518 U.S. 343, 353 n.3 (1996), this Supreme Court commented on whether prisoner claims were frivolous: "Depriving someone of an arguable (though not yet established) claim inflicts actual injury, because it deprives him of something of value--arguable claims are settled, bought, and sold." A claim is supported "by existing law or by a non-frivolous argument for the extension,

modification, or revision of existing law or the establishment of new law." Eichwedev v. Chandler, 696 F.3d 660, 677 (7th Cir. 2012). A PLRA strike "may not simply rest on the fact of dismissal." Andrew v. United States, 398 F.3d 1113, 1120 (9th Cir. 2005).

Claims dismissed without prejudice for a mere failure to prosecute do not constitute a PLRA strike. Crump v. Blue, 121 F. 4th 1108, 1112-13 (6th Cir. 2024). Dismissals under the Eleventh Amendment are not strikes, Id. at 1112, nor dismissals for a failure to exhaust administrative remedies. Turley v. Gaetz, 625 F.3d 1005, 1009 (7th Cir. 2010)(citing Jones v. Bock, 549 U.S. 199 (2007).

> "Even if an action only has one meritorious claim admidst a sea of frivolous ones, the case cannot count as a § 1915(g) strike. As this and other courts have contemplated, if any of the claims have merit, then the case cannot count as a strike."

Taylor v. First Med. Mgmt., 508 Fed.Appx. 488, 496 (6th Cir. 2012); Escalero v. Samaritan Villiage, 938 F.3d 380, 381-382 (2nd Cir. 2019); Tolbert v. Stevenson, 635 F.3d 646, 650-651 (4th Cir. 2010); Thompson v. D.E.A., 492 F.3d 428, 432 (D.C.Cir. 2007); Tafari v. Hues, 539 F.Supp.2d 694, 702 (S.D.N.Y. 2008). Dismissal of State law claims on a court declining to exercise supplemental jurisdiction (mixed dismissals) are not strikes. Crump v. Blue, 121 F.4th at 1111-12; Taylor v. Stevens, 146 F.4th 480, 484 (6th Cir. 2025); Cotton v. Noeth, 96 F.4th 249, 255 (2nd Cir. 2024); Hoffman v.

Pulido, 928 F.3d 1147, 1152 (9th Cir. 2019).

Petitioner requests this Supreme Court to intepret Congress's intent behind the 3-strikes provision of the Prisoner Litigation Reform Act (PLRA) 28 U.S.C. § 1915(g). Before this Court evaluate Petitioner's litigation history, two preliminary questions arise: (1) which court's decision of what qualifies as a strike is binding on subsequent federal courts; and (2) what is the proper defination for "frivolous" and for "failure to state a claim upon which relief could be granted."

The PLRA screening provisions (28 U.S.C. § 1915A and 42 U.S.C. § 1997e(c)(1)) requires a federal district court to dismiss a complaint filed by a prisoner *sua sponte* if it is frivolous, malicious, or fails to state a claim upon which relief could be granted. Under 28 U.S.C. § 1915(g), a federal court that determines that a prisoner plaintiff who has had three or more prior actions or appeals dismissed on such grounds may not proceed *in forma pauperis* unless he is in imminent danger of physical injury.

Petitioner was denied his request to proceed *in forma pauperis* in the case at bar under § 1915(g). However, he contends that he does not have three prior strikes as held by the district court and Court of Appeals for the Sixth Circuit.

The first question is which Judge or court is authorized to make a binding determination that a prior dismissal counts as a PLRA strike against a prisoner plaintiff. The Sixth Circuit, Seventh Circuit, and Eighth Circuit have held that a "fourth" Judge must make an independent evaluation of whether each prior case qualifies as a strike. Simons v. Washington, 996 F.3d at 353; Hill v. Madison County, Ill., 983 F.3d at 906; Gonzalez v. United States, 23 F.4th at 790. The Ninth Circuit held in Andrew v. United States, 398 F.3d at 1120, that a PLRA strike "may not simply rest on the fact of dismissal." A decision that a prisoner has three strikes may be appealed. See, Lomax v. Ortiz-Marquez, 590 U.S. 595 (2020); Richey v. Dahne, 807 F.3d at 1209.

In the Sixth Circuit, moreover, unpublished decisions are not binding precedent. Bell v. Johnson, 308 F.3d at 611. Thus, Petitioner's four prior PLRA dismissal that are unpublished and this case at bar are not binding on subsequent courts. Unpublished dismissals and 3-strike decisions are more likely to be conclusory, erroneous, and not as well reasoned as a binding published decision [but nonetheless cited in other prisoner cases. (As Petitioner's unpublished cases on different issues often are cited by the courts in other prisoners' cases).

Although Petitioner has been litigious for over two decades in the federal courts, surely Congress did not intend to

penalize a prisoner plaintiff and deny him the *in forma pauperis* privilege for an erroneous prior dismissal and a subsequent erroneous PLRA statutory interpretation.

The next question is how Congress would define frivolous and a failure to state a claim upon which relief could be granted. The statutory text of the PLRA does not define either term; however, the federal courts have applied general definitions for these terms. Indeed, the courts have held that the screening provision of the PLRA, for failure to state a claim, are identical to Rule 12(b)(6) of the Federal Rules of Civil Procedure. These precedents have not yet been adopted or rejected by this Supreme Court as the PLRA standard.

This Supreme Court has held that a pleading is frivolous if it "indisputably" has no arguable basis in law or fact, or fails to state a claim when it is "beyond doubt" that the plaintiff can prove no set of facts which could entitle him to judicial relief. The terms "indisputably" and "beyond doubt" must be accorded meaning. But just this year 2026, this very Supreme Court observe in dicta, Bonk v. Choy, 607 U.S. at 188: "Lower courts have sometimes try to demand more information than Rule 8 requires for certain kinds of claims." Petitioner, and other prisoners in his situation, have been held to a higher pleading rules

than the Federal Rules of Civil Procedure require to state a claim.

As a passing PLRA history is the filing of Annabel, II v. Paul Eyke, et al., U.S. Dist. W.D. Mich. No. 2:05-cv-209. This case was sua sponte dismissed on the same PLRA attached proof-of-exhausted-admistrative-remedies rule of the Sixth Circuit was two years later overrule in Jones v. Bock, 549 U.S. 199 (2007)(imagine that, as Plaintiff had indeed exhausted remedies in his first lawsuit).

One court defined arguable merit "by existing law or by a non-frivolous argument for the extension, modification, or revision of existing law or the establishment of new law." Eichwedev v. Chandler, 696 F.3d at 677. Cf., Lewis v. Casey, 518 U.S. at 353 n.3.

Moreover, the Sixth Circuit courts are ruling not only contrary to this Supreme Court's Berk v. Choy, supra, but also to this Court's precedent that *pro se* complaints are held to a less stringent standard than pleadings drafted by lawyers. It is the factual content in which the courts must identify a *pro se* plaintiff's claims, and not whether he correctly named a legal theory at all. At the Rule 12(b)(6) motion to dismiss stage a complaint need not anticipate and preemptively plead against every potential defense to the factual claim. The plausibility

standard is not akin to a probability requirement, Ashcroft v. Iqbal, 556 U.S. at 678, nore does Rule 12(b)(6) allow a judge to weigh the factual evidence or consider the likelihood of a plaintiff's potential for success. Bell Alantic Corp. v. Twombly, 550 U.S. at 556; Skinner v. Switzer, 562 U.S. at 529-530

It has long been the legal reasoning of the federal courts to consider even novel claims brought under 42 U.S.C. § 1983 and to find consistency between the many available judicial decisions a party may research. Nothing in the PLRA's language or Congress intent to depart from the court's usual practice under the Federal Rules of Civil Proceedure under Rule 8 and Rule 12(b)(6). See Jones v. Bock, 549 U.S. 199, 214 (2007); Mattox v. Edelman, 851 F.3d 583, 593 (6th Cir. 2017). In fact, the qualified immunity standard discussed by this Supreme Court, in Hope v. Pelzer, 536 U.S. 730 (2002), held that a claim that is novel may nonetheless be sufficiently clear by the "contours" of existing precedent to place a defendant on notice of the unlawfulness of his conduct. With this standard in Hope and the doctrine called Thinking like a lawyer should guide whether a plaintiff has in good faith filed and stated a claim upon with he could be granted relief.

Congress intended the PLRA to curb abusive prison-

er litigation, not good faith and reasonable litigation and to booby-trap pro se litigants. Yet, this Supreme Court has repeatedly resisted officials and the lower courts from unfairly weaponizing the PLRA against prisoner litigants: Jones v. Bock, supra; Ross v. Blake, 578 U.S. 632 (2016); Lomax v. Ortiz-Marquez, 590 U.S. 595 (2020).

Once again, a prisoner petitions this Court to interpret the PLRA and bring the Courts of Appeals in compliance with Supreme Court precedent.

As a final note, the Courts of Appeals correctly hold that an entire complaint, including all federal and state law claims, must be dismissed for the reasons enumerated under § 1915(g), for the action or appeal to count as a strike.

The district court cited three lawsuits of Petitioner's that supposedly failed to state a claim and one supposedly frivolous appeal spanning over 21 years of his federal pro se litigation (none on the grounds of being malicious). Against the foregoing backdrop of legal standards, and case law citation supporting prior claims, Petitioner asserts as follows below that he does not have any strikes under the PLRA 28 U.S.C. § 1915(g).

II. Applying the correct legal standards, should this Supreme Court overrule the Sixth Circuit Court of Appeals and the district court's erroneous holdings that Petitioner has strikes under the PLRA barring him from proceeding *in forma pauperis*?

Petitioner has filed nearly twenty federal lawsuits, beginning in 2005—a span of 21 years—and several appeals of dismissed lawsuits. Although he has won multiple appeals, settlements, and a Judgment, he remains a pauper due to unpaid debts. He has three federal actions pending plus the case at bar for which his request was denied to proceed *in forma pauperis*. The United States district courts in Michigan frequently cite decisions in his cases for the rulings in other prisoners' cases. To say the least, he is a litigious.

However, Petitioner has never been accused of a malicious filing or threatened with sanctions for litigation misconduct. Indeed, he has endeavored to file actions, motions, or appeals in good faith and to the best of his understanding of the Federal court rules and statutory laws. Notwithstanding, the district court denied his request to proceed *in forma pauperis* in the instant case—as did the Court of Appeals for the Sixth Circuit—accusing him of filing three prior actions that failed to state a claim upon which relief could be granted and one frivolous appeal.

In the context of 21 years of litigation history, this 3-strikes dismissal is harsh and draconian interpretation of the

purpose of the PLRA 28 U.S.C. § 1915(g). In fact, Petitioner arguably disputes having any PLRA strikes; and in addition to the foregoing legal standards cited in this petition, he cites each dismissed action and appeal with authorities outlining valid substantive claims.

Annabel v. Shirtz, No. 2:07-cv-30, 2007 WL 145591 (W.D. Mich. May 16, 2007).

This was only the second lawsuit Petitioner had filed, over 19 years ago. It was dismissed for failure to state a claim. He alleged that two corrections officers destroyed his personal property without due process but failed to allege that post-deprivation remedies (he did not know exist) were inadequate. In 2007, the Sixth Circuit held that the PLRA did not allow prisoners to amend their complaints. See, LaFountain v. Harry, 716 F.3d 944, 951 (6th Cir. 2013).

Regardless, it is the facts alleged in a complaint that states a claim, not whether a *pro se* plaintiff cites a correct legal theory or even any legal theory at all. The facts, especially the loss of hygiene supplies or legal work, arguably supported an Eighth Amendment claim, under Hudson v. Palmer, 468 U.S. 517, 530 (1984) and Scher v. Engelke, 943 U.S. 921, 923-924 (8th Cir. 1991). Petitioner could also support a claim of First Amendment retaliation motivated by his filing of

grievances as protected conduct and destruction of property as an adverse action. Thaddeus-X v. Blatter, 175 F.3d 378 (6th Cir. 1999)(en banc).

Since Jones v. Bock, 549 U.S. 199 (2007), this Supreme Court has been overruling the Sixth Circuit's harsh PLRA interpretations. In 2007, the Sixth Circuit precedent did not allow a prisoner, like Petitioner, to amend his Complaint in the Shirtz case. That unfairness and that the PLRA dismissal being over 19 years ago, seems contrary, as an alternative reason, Congress's purpose of 28 U.S.C. § 1915(g), for counting the Shirtz case as a strike.

It is not beyond doubt that in Shirtz that Petitioner could prove no set of facts which would entitle him to relief. As quoted from O'Grady v. Libertyville, 304 F.3d 719, 723 (7th Cir. 2002):

> "While the theory that De Tendevous originally put forth was a due process/takings claim, the facts alleged are sufficient to support a claim that the Ordinance would violate their constitutional rights if it were found to be an ex *post* facto law."

Annabel v. Michigan Dep't of Corrections, No. 1:14-cv-756, 2014 WL 4187675 (W.D. Mich. Aug. 21, 2014).

The district court counted this case as a strike; however, the Court of Appeals subsilencio and by omission of citing this case in its opinions and orders seems to have

overruled the district court counting it as a strike.

Some claims in the "M.D.O.C." case were dismissed at PLRA screening for failure to state a claim, but several other claims were allowed to proceed. The M.D.O.C. district court ordered Petitioner to get photocopies of the complaint and summons, so that the U.S. Marshal Service could execute service of process upon the remaining defendants. However, corrections officials impeded Petitioner from getting photocopies or the forms to send legal mail to the courts and also restricted access to an ink pen, paper, and legal property until several months after the court-ordered deadline — the remaining claim were dismissed without prejudice for a failure to prosecute.

The district court cited Pointer v. Wilkinson, 502 F.3d 369 (6th Cir. 2007), in support of counting the mixed dismissal of M.D.O.C. complaint as a PLRA strike, although Pointer only reasoned a combination of failure to state a claim and a failure to exhaust administrative remedies. Petitioner cited Crump v. Blue, 121 F.4th 1108, 1113 (6th Cir. 2024):

> "While we appreciate that the breadth of *Pointer*'s mixed-claim reasoning could extend to today's mixed-claim dismissals, we see no good ground to extend the decision beyond its holding. *Pointer*'s reasoning has not fared well in the other circuits, and it's not clear that it respects the language of the Act."

See also, Talley v. Wetzel, 15 F.4th 275, 283-284 (3rd Cir. 2021);

Brown v. Megg, 857 F.3d 287, 291-292 (5th Cir. 2017); Taylor v. Stevens, 146 F.4th 480, 484 (6th Cir. 2025). Moreover, Petitioner's state law claims were dismissed on grounds that the M.D.O.C. court declined to exercise supplemental jurisdiction. Crump v. Blue, 121 F.4th at 1111-12; Taylor v. Stevens, 146 F.4th at 484; Cotton v. Noeth, 96 F.4th 249, 255 (2nd Cir. 2024); Hoffman v. Pulido, 928 F.3d 1147, 1152 (9th Cir. 2019).

Annabel v. Washington, No. 1:24-cv-97, 2024 WL 1108754 (W.D. Mich. Mar. 13, 2024

The Washington case was sua sponte dismissed by the district court for failure to state a claim, and upheld by the Court of Appeals for the Sixth Circuit, with a petition for certiorari denied by this Supreme Court. The lower courts essentially disbelieved Plaintiff's well-pleaded factual allegations of retaliatory motive (a jury question), focussed only on the allegations of very close temporal proximity among Petitioner's numerous factual allegations, including a false misconduct report dismissed at a hearing and unjustified transfer to a higher security level facility and interference with attending as a witness to a federal jury trial. Despite this Supreme Courts ruling in Shaw v. Murphy, 532 U.S. 223, 232 (2001) and 42 U.S.C. § 1985(2), the lower courts held that Petitioner did not have a free speech right to testify at

another prisoner's federal lawsuit jury trial of prison conditions without retaliatory harassment (the court had issued a writ of habeas corpus ad testificandum). Since the Supreme Court never ruled on the merits, res judicata does not bar the Supreme Court from holding that the Washington case was erroneously dismissed and is not a strike.

Indeed, Petitioner attached a statement of issues for appeal to his request for *in forma pauperis* in the Washington case—a district court magistrate judge found appeal was in good faith and granted Petitioner's request to proceed IFP on appeal. Moreover, nearly two months after the district court dismissal of Washington, the campaign of retaliation brought additional facts and admissions to light. However, the district court denied Petitioner's request to file an amended supplemental complaint.

The district court declined to exercise supplemental jurisdiction of state law claims in the Washington case. As cited, supra, this mixed-claim dismissal cannot count as a strike for failure to state a claim, without a decision on the merits of the state law claims.

Annabel v. Novak, No. 22-1867, 2023 U.S. App. LEXIS 19721 (6th Cir. May 2, 2023)

The district court dismissed the Novak case at summary

judgment and found that an appeal would not be taken in good faith. The Court of Appeals also denied Petitioner's request to appeal *IFP*, holding that an appeal would be frivolous.

Novak involved First Amendment retaliation claims for denied law library access and a misconduct charge of "Insolence" for a written complaint (kite) for Joseph Novak lying about Petitioner having overdue law library materials and alleged other acts of abuse of power and corruption. The kite contained no profanity or insults but focussed on defendant's on-the-job behavior, although it expressed Petitioner's frustration and intent to file a lawsuit. The prison rule for "Insolence" is vague and Petitioner had no notice that his kite complaint constituted anything "Insolence" that it was not protected conduct. See, Cassels v. Stalder, 342 F.Supp.2d 555, 556 (M.D.La. 2004)("Thus, an inmate may not know it is a 'rumor' until after officials have declared it as such.").

Even an attorney Petitioner had as an associate advised him that the kite did not seem insolent rather than protected conduct and expression of frustration and legitimate complaints. It is not indisputable or beyond doubt that the kite violated the "Insolence" rule, or that Petitioner would have known the vague definition of the rule.