that, if available, a parent is the first choice" (*Lynch*, p 908). Noncriminal aliens who are detained in removal proceedings typically have the burden of establishing that they are not a threat and they do not pose a risk of flight. The district court's holding would have shifted this burden to the government. This shift would have the effect of erroneously creating an affirmative right of release for parents, which was not found in the original Settlement.

Finally, the government motioned to amend the Settlement, asserting the surge in family units crossing the border makes it "no longer equitable" to enforce the Settlement as written. However, the court noted that the original Settlement had anticipated an influx and provided that under such circumstances the government would have more time to release minors or to place them in licensed facilities. Because no unanticipated conditions had arisen, the original Settlement still stood. The court rejected the government's assertion that the law has changed substantially since the Settlement was approved because the law the government referred to was passed in 1996, before the Settlement was approved. Further, the "bureaucratic reorganization" of the INS to the Department of Homeland Security (DHS) was not grounds for invalidating the Settlement.

Discussion

The *Reno v. Flores* Settlement provided rights to minors who are held in deportation proceedings. The decision by the court of appeals in *Flores v. Lynch* clarified that the Settlement applies to both accompanied and unaccompanied minors. The present decision by the court of appeals also rejected the government's attempts to modify the Settlement. The *Flores v. Lynch* ruling strengthens the position of accompanied minors by clarifying they are entitled to the same protections that the Settlement grants to unaccompanied minors. Both the Settlement and the current ruling raise questions upon which the psychiatrist might be asked to comment. For example, psychiatrists might be called upon to assess minors for their risk of dangerousness, as a finding of dangerousness could impact their standing under both the Settlement and the present ruling. A second question that psychiatrists might be asked to comment on is what needs minors have in placement settings to satisfy their rights under the Settlement and the current ruling. Finally, psychiatrists could be called upon to assess adequacy and appropriateness of placements for minors and services offered at such facilities.

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Clarification to Prison Litigation Reform Act "Three Strikes" Rule

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Ninth Circuit Court Rules Dismissals Due to Lack of Subject Matter Jurisdiction Do Not Count As Strikes Under Prison Reform Litigation Act

In *Washington v. Los Angeles County Sheriff's Department*, 833 F.3d 1048 (9th Cir. 2016), plaintiff-appellant William Nathaniel Washington appealed the decision of the U.S. District Court for the Central District of California denying his request to file an action *in forma pauperis* (IFP), alleging violation of his Eighth Amendment right to adequate medical care and safe prison conditions. The district court had denied Mr. Washington's IFP request on the basis that he had accrued at least three prior strikes under the Prison Litigation Reform Act of 1995 (PLRA) and that his complaint failed to meet the required standard of "imminent danger" of physical injury necessary to bypass the three-strike rule. The Ninth Circuit Court of Appeals held that the district court had improperly assessed the existence of prior strikes against Mr. Washington, and the district court's decision was reversed and remanded for further proceedings consistent with this opinion.

Facts of the Case

The plaintiff-appellant, Mr. Washington, was a California state prisoner who was detained at the time of his appeal. While awaiting the outcome of a criminal trial, he filed five federal complaints, resulting in PLRA strikes against him.

In 2009, Mr. Washington filed his first complaint in the U.S. District Court for the Eastern District of California against prison wardens and various state officials alleging that they had applied an improper sentencing enhancement, causing him to remain in prison. He requested monetary and punitive compensation as well as a recall of his sentence. The district court dismissed his claim, concluding that a favorable ruling would cast doubt on the validity of Mr. Washington's underlying sentence. At the time, he was also advised that challenges to a conviction should be filed as a *habeas corpus* petition.

In January 2010, Mr. Washington filed a *mandamus* petition in the U.S. District Court for the Central District of California challenging the validity of the sentencing enhancement. He also submitted a simultaneous IFP request. The court ruled that a *mandamus* petition is an inappropriate mechanism for challenging sentencing decisions. Mr. Washington's complaint and IFP request were both denied. In February 2010, Mr. Washington filed another *mandamus* petition, which was a near replica of the petition he had filed one month earlier. He also filed another IFP request. His claims were again denied. Moreover, Mr. Washington was advised by a different judge to file a *habeas* petition if he wished to challenge the validity of his sentencing.

In July 2012, Mr. Washington filed a complaint against the Los Angeles Police Department (LAPD) in relation to ongoing state criminal proceedings. At that time, he again requested IFP status. He alleged LAPD officers and agents had committed felony misconduct including potentially manipulating the verdict of the trial to falsely imprison him. Specifically, Mr. Washington claimed the defendants had forged evidence and falsified reports during the criminal investigation against him. He requested damages and various forms of injunctive relief.

After reviewing his request, the court denied Mr. Washington's claim, concluding that it was barred either by *Heck v. Humphrey*, 512 U.S. 477 (1994), because it recalled a criminal conviction, or by *Younger v. Harris*, 401 U.S. 37 (1971), because the state criminal proceedings were ongoing. The court also noted that filing a *habeas* petition was the appropriate protocol for challenging the legality of his sentencing. Mr. Washington's IFP request was dismissed on the grounds the district court lacked jurisdiction over this matter. Furthermore, the court stated that granting leave to amend the sentence would be futile and that the claim itself was "frivolous."

One month later, in August 2012, Mr. Washington filed another claim similar to his last. However, this time, he filed the complaint against the City of Los Angeles and removed his request for immediate release. He instead requested that a thorough investigation of the criminal case be performed and that a forensic examiner be appointed to prove the authenticity of the incriminatory police reports compiled during the investigation. He also removed his claim of false imprisonment, but retained his allegation of due process violations arising from police misconduct. The same magistrate judge that reviewed his previous July 2012 IFP request reviewed this complaint. Mr. Washington's IFP request was again denied for the same reasons cited in July 2012, but this time, the judge also noted that the denial may constitute a strike.

In 2016, Mr. Washington filed a complaint against both the Los Angeles County Sheriff's Department and the Twin Towers Correctional Facility alleging violations of his Eighth Amendment right to adequate medical care and safe prison conditions. Along with the submission of his complaint, he requested permission to proceed IFP. His request was dismissed by the district court on the basis that he had accrued at least three prior strikes under the PLRA and that his complaint failed to meet the required standard of "imminent danger of serious physical injury" required to bypass the three-strike rule (28 U.S.C. § 1915(g) (1996)).

Ruling and Reasoning

The Ninth Circuit held that the district court had improperly assessed the existence of prior strikes against Mr. Washington. In line with its opinion, the court reversed the district court's dismissal of the claim and remanded the case for further proceedings. The court of appeals based this conclusion, in part, on the legal framework provided by *Heck*, which explained when a dismissal constitutes a strike under PLRA. Under PLRA, filing a complaint that is deemed frivolous, malicious, or fails to state a claim is grounds for incurring a strike.

More specifically, the court determined that Mr. Washington's 2016 complaint could neither be characterized as frivolous or malicious. The court of appeals concluded the claim could also not be dismissed for failure to state a claim under the PLRA. APLRA

strike should only be applicable when the "case as a whole" is dismissed for qualifying reasons under the Act. In Mr. Washington's case, he filed multiple complaints under a single action including injunctive relief challenging his sentence as well as monetary relief for damages attributable to that same sentence or conviction. Although the latter is subject to dismissal under *Heck* on the basis that an award of damages would undermine the validity of the underlying conviction, the former sounds only in *habeas* and does not fall under the purview of the PLRA.

The court further asserted that Mr. Washington's two prior *mandamus* petitions did not constitute strikes under the PLRA rule. Since his damages claims challenged the legality of his conviction, his two prior *mandamus* petitions fell under the purview of the court of criminal appeals and were outside the scope of PLRA. Citing prior precedent (*Younger*, *supra*; *Moore v. Maricopa Cty. Sheriff's Office*, 657 F.3d 890 (9th Cir. 2011)), the court of appeals concluded that Mr. Washington's two prior dismissals under *Younger* did not constitute strikes. The court instead concluded that this case should have been treated like a dismissal for lack of subject-matter jurisdiction.

Discussion

The PLRA was designed to curtail frivolous lawsuits by prisoners regarding conditions in correctional facilities in part by barring prisoners from proceeding IFP in a federal civil rights suit after three prior suits have been dismissed as frivolous, malicious, or failing to state a claim. An exception is made where there is "imminent danger of serious physical injury." In limiting the scope of what constitutes as a prior strike, the appellate court ruling increases the potential for litigation from prisoners.

The provision of comprehensive correctional mental health care is largely the result of successful litigation from prisoners. Under the Eighth Amendment, prisoners have certain rights to medical and mental health care (*Estelle v. Gamble*, 429 U.S. 97 (1976); *Bowring v. Godwin*, 551 F.2d 44 (4th Cir. 1977)). These rights were was subsequently extended to pretrial detainees under the Due Process Clause of the Fourteenth Amendment in *Bell v. Wolfish*, 441 U.S. 520 (1979). More recently, the Supreme Court found that a court-mandated limit on the prison population is necessary to protect prisoners' Eighth Amendment rights to adequate medical and mental health care (*Brown v. Plata*, 563 U.S. 493 (2011)).

This case is a double-edged sword, in that it may allow an increase in potentially frivolous prison litigation cases by limiting the situations in which prisoners may accrue strikes under the PRLA. Psychiatrists practicing in correctional settings as well as mental health care provided in such settings could, of course, be subject to such suits. However, an increased ability for prisoners to pursue litigation also has the possibility of leading to further court decisions that would result in additional improvements in the provision of correctional mental health services.

The PRLA allows exceptions to the "three strikes" rule in cases where there is "imminent danger of serious physical injury." However, it remains unclear whether this exception extends to an imminent danger of serious physical injury related to an underlying psychiatric disorder. As such, the role of psychiatrists in determining the risk of imminent danger of injury remains unclear. Thus, it seems prudent for psychiatrists in correctional settings to carefully assess their patients for psychiatric conditions and issues with treatment that could result in injury; to educate their patients and administration about these issues; and to document their findings and efforts to address them.

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