

APPENDIX

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APPENDIX A

[FILED: JULY 14, 2025]

[PUBLISH]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-10153

JAMES E. MCNAIR,

Plaintiff-Appellant,

versus

K. JOHNSON,
Nurse Practitioner,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:23-cv-00505-MW-MAF

Before NEWSOM, BRASHER, and WILSON, Circuit Judges.

NEWSOM, Circuit Judge:

James McNair, a Florida prisoner who was once pro se but is counseled on appeal, contests the district court’s without-prejudice dismissal of his civil-rights action as “malicious” under the Prison Litigation Reform Act. McNair insists that his failure to disclose two prior cases in the litigation-history section of a standardized prisoner-complaint form didn’t render his action “malicious” within the meaning of the PLRA’s operative provisions. Even if McNair is right about that, we affirm

the district court's decision on the ground that it had the inherent authority to manage its docket and sanction McNair's violation of court rules by dismissing his suit without prejudice.

I

A

Proceeding pro se in the Northern District of Florida, James McNair sued Kim Johnson, a nurse practitioner at Liberty Correctional Institute, where McNair was incarcerated, alleging deliberate indifference to his medical needs in violation of the Eighth Amendment. McNair filed his action under 42 U.S.C. § 1983 and submitted the Northern District's standardized "Civil Rights Complaint Form for Pro Se Litigants." Compl. Form at 1, Dkt. No. 1. As relevant here, the form required any would-be plaintiff to identify his "prior litigation." In particular, it explained that the "failure to disclose all prior state and federal cases—including, but not limited to civil cases, habeas cases, and appeals—may result in the dismissal of this case," and advised the plaintiff to "err on the side of caution if [he was] uncertain whether a case should be identified." *Id.* at 13. McNair listed six cases on the form and certified under penalty of perjury that the information he provided was true and correct.

B

Pursuant to the Prison Litigation Reform Act, a magistrate judge screened McNair's case to determine whether it warranted dismissal on the ground that his "complaint" was "frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted," or "s[ought] monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915A(a)–(b). Having done so, the judge recommended dismissal under § 1915(e)(2)(B),

which, as relevant here, states that a court “shall dismiss the case at any time if the court determines that . . . the action . . . is . . . malicious.” *Id.* § 1915(e)(2)(B)(i). The magistrate judge found that McNair had “affirmatively misrepresented his federal litigation history under the penalty of perjury” by failing to disclose two prior habeas-related cases. R. & R. at 6–8, Dkt. No. 9. In particular, the magistrate judge noted the absence of two cases from the Middle District of Florida: (1) McNair’s initial petition for habeas corpus relief in Case No. 5:10-cv-00638-MSS-PRL; and (2) his motion for reconsideration of the denial of a request for a certificate of appealability in Case No. 5:21-cv-82-SPC-PRL. The magistrate judge deemed these omissions “false responses” because McNair “knew that accurate disclosure of his litigation history [was] required.” *Id.* at 5, 7.

In his report and recommendation, the magistrate judge emphasized the importance of penalizing untruthful responses: “[I]f word spread around the prisons that the questions on the complaint form could be circumvented in such a manner, the court might be confronted with widespread abuse from its many prisoner litigants.” *Id.* at 7. The magistrate judge concluded that dismissal was “[a]n appropriate sanction for [McNair’s] abuse of the judicial process in not providing the court with true factual statements or responses.” *Id.* (first citing *Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998); and then citing *Jackson v. Fla. Dep’t of Corr.*, 491 F. App’x 129, 132–33 (11th Cir. 2012)).

As relevant here, McNair objected to the R&R on two grounds. With respect to the first omission, he stated that although he failed to list his initial habeas petition in Case No. 5:10-cv-00638-MSS-PRL, he disclosed the subsequent petition in that case, which bore the same docket number. And with respect to the second, he

contended that he wasn't required to disclose the motion for reconsideration of the denial of a COA because it didn't challenge his conviction. In any event, McNair requested leave to amend his complaint to include the missing cases and correct other minor errors.

Without conducting a hearing, the district court adopted the R&R and dismissed McNair's action without prejudice on the ground that it was "malicious" within the meaning of 28 U.S.C. § 1915(e)(2)(B)(i). The district court found that McNair "affirmatively misrepresented" his litigation history by omitting the two cases, even though it recognized that both omissions "[e]ll below th[e] materiality standard, as neither of his omitted cases seem to bear on his present [] § 1983 claims." Order Accepting R. & R. at 3 & n.1, Dkt. No 11.

This is McNair's appeal.

II

Before diving into the merits, we provide a bit of background, as the parties' briefing reflects what seems to us some underlying confusion. As particularly relevant here, there are two sources of authority pursuant to which a district court may dismiss a prisoner's civil-rights suit—(1) the Prison Litigation Reform Act and (2) the court's inherent authority. We examine each in turn.

A

We begin with the Act. "[I]n the wake of a sharp rise in prisoner litigation in the federal courts," *Woodford v. Ngo*, 548 U.S. 81, 84 (2006), Congress enacted the PLRA in an effort "to cabin not only abusive but also simply meritless prisoner suits," *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1726 (2020). The PLRA's reforms sought to "reduce the quantity and improve the quality of prisoner suits." *Porter v. Nussle*, 534 U.S. 516, 524 (2002). The

statute accordingly creates several mechanisms by which courts can “filter out the bad claims and facilitate [the] consideration of the good” ones. *Jones v. Bock*, 549 U.S. 199, 204 (2007); *see also White v. Lemma*, 947 F.3d 1373, 1376 (11th Cir. 2020).

First, the PLRA requires district courts to conduct an early screening of cases filed by inmates against government entities and officers. 28 U.S.C. § 1915A(a); *see also Jones*, 549 U.S. at 202. Before or shortly after docketing, a court “shall” review a prisoner’s case to determine whether the “complaint” is “frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(a)–(b). If the court concludes that any of these conditions applies, it “shall . . . dismiss the complaint, or any portion of” it. *Id.* § 1915A(b).

Second, the Act regulates the conditions under which indigent prisoners may proceed in forma pauperis. *See* 28 U.S.C. § 1915. IFP status “is designed to ensure that indigent litigants have meaningful access to the federal courts.” *Wells v. Brown*, 58 F.4th 1347, 1355 (11th Cir. 2023) (en banc) (quoting *Neitzke v. Williams*, 490 U.S. 319, 324 (1989)). But in the PLRA, “Congress recognized that a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits”—and, indeed, that district courts had been “flooded with prisoner complaints,” many of which “had no merit [or] were frivolous.” *Id.* at 1355 (citation modified). To address that problem, the PLRA requires sua sponte dismissal of an indigent inmate’s suit if *either* “the allegation of poverty is untrue” *or* (echoing the screening provision) the “action” “(i) is frivolous or malicious; (ii) fails to state a

claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A)–(B).

Finally, the PLRA includes a “three strikes” provision, which denies a prisoner the privilege of proceeding IFP if he has previously brought at least three “action[s]” or “appeal[s]” in federal court while incarcerated that were dismissed as “frivolous, malicious, or fail[ing] to state a claim.” *Id.* § 1915(g)¹; *see also Daker v. Comm’r, Ga. Dep’t of Corr.*, 820 F.3d 1278, 1281, 1283–84 (11th Cir. 2016) (stating that these are the “*only* grounds that can render a dismissal a strike”). A prisoner who has three such “strikes” must pay the full filing fee to proceed, which may impede his ability to access the courts. *See Lomax*, 140 S. Ct. at 1723. This sanction reflects Congress’s decision to limit “attempt[s] to obtain a ‘short sabbatical in the nearest federal courthouse’ . . . or to harass prison officials” by “abusive[ly]” exploiting IFP status. *Mitchell v. Farcass*, 112 F.3d 1483, 1488–89 (11th Cir. 1997) (quoting *Cruz v. Beto*, 405 U.S. 319, 327 (1972) (Rehnquist, J., dissenting)); *see also Wells*, 58 F.4th at 1355 (“By taking away the privilege of proceeding in forma pauperis from prisoners who have struck out, the rule is ‘designed to filter out the bad claims and facilitate consideration of the good.’” (quoting *Jones*, 549 U.S. at 204)).

Importantly here, to aid in the enforcement of the PLRA’s limitations, some district courts require an inmate plaintiff to disclose his litigation history on a standardized form filed alongside his complaint and signed under the penalty of perjury. Some such forms, like those utilized in the Northern District of Florida,

¹ An exception exists for prisoners who are “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

require the disclosure of an inmate's entire litigation history—including cases that might not count as PLRA strikes. The Act itself doesn't require such forms—or the disclosure of litigation history more generally—and so, unsurprisingly, it doesn't speak to the consequences of a prisoner's failure to complete his form accurately.

B

Separate and apart from the PLRA, a district court may also dismiss a case under its “inherent authority,” which it possesses as a means of “manag[ing] its own docket ‘so as to achieve the orderly and expeditious disposition of cases.’” *Equity Lifestyle Props., Inc. v. Fla. Mowing and Landscape Serv., Inc.*, 556 F.3d 1232, 1240 (11th Cir. 2009) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991)). “The court’s power to dismiss [a case] is an inherent aspect of its authority to enforce its orders and ensure prompt disposition of lawsuits.” *Jones v. Graham*, 709 F.2d 1457, 1458 (11th Cir. 1983) (per curiam). But “[b]ecause of their [] potency,” a district court’s “inherent powers must be exercised with restraint and discretion.” *NASCO*, 501 U.S. at 44.

A dismissal can be either with or without prejudice to refiling. A district court may use the “extreme sanction” of sua sponte dismissing a case *with* prejudice pursuant to its inherent authority only when “(1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice.” *Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1337–38 (11th Cir. 2005) (quoting *World Thrust Films, Inc. v. Int’l Fam. Ent., Inc.*, 41 F.3d 1454, 1456 (11th Cir. 1995)). While the “outright dismissal of a lawsuit . . . is a particularly severe sanction,” the Supreme Court has recognized that it’s “within the court’s discretion.” *NASCO*, 501 U.S. at 45. A

dismissal *without* prejudice, by contrast, doesn't require a finding of willfulness or bad faith because its consequences are less severe. A district court will rarely be found to have abused its discretion in dismissing without prejudice because the plaintiff is ordinarily permitted to simply refile. *See Dynes v. Army Air Force Exch. Serv.*, 720 F.2d 1495, 1499 (11th Cir. 1983).

III

The parties' briefing here has focused on the PLRA, but Nurse Johnson and the state contend that we can affirm the district court's judgment on an alternative ground—namely, that the court had inherent authority to dismiss McNair's complaint without prejudice as a sanction for his failure to disclose his full litigation history as required by the standard inmate complaint form. *See, e.g., Statton v. Fla. Fed. Jud. Nominating Comm'n*, 959 F.3d 1061, 1065 (11th Cir. 2020) ("We may affirm the judgment below on any ground supported by the record, regardless of whether it was relied on by the district court."). For reasons we will explain, we agree.²

"We review the district court's decision to dismiss a case for failure to comply with the rules of the court for an abuse of discretion." *Zocaras v. Castro*, 465 F.3d 479, 483 (11th Cir. 2006). An abuse of discretion occurs where the district court "applies the wrong law, follows the wrong procedure, bases its decision on clearly erroneous facts,

² Accordingly, we do not reach the other alternate grounds for affirmance, including Federal Rules of Civil Procedure 11 or 41. Nor do we reach the question whether the district court's dismissal should be counted as a § 1915(g) "strike" in any future litigation. *Cf. Gonzalez v. United States*, 23 F.4th 788, 791 (8th Cir. 2022) (explaining that the authority to determine whether an inmate's suit counts as a "strike" rests with the court ultimately faced with deciding whether he has run afoul of § 1915(g)'s three-strikes provision).

or commits a clear error in judgment.” *United States v. Brown*, 415 F.3d 1257, 1266 (11th Cir. 2005). As already noted, a dismissal without prejudice generally will not be deemed to constitute an abuse of discretion. *See Dynes*, 720 F.2d at 1499.

Although a pro se litigant’s filings are construed liberally, they must comply with procedural rules. *See, e.g., Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007); *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (“[A] pro se IFP litigant . . . is subject to the relevant law and rules of court”). “A district court has discretion to adopt local rules that are necessary to carry out the conduct of its business.” *Frazier v. Heebe*, 482 U.S. 641, 645 (1987); *see also* 28 U.S.C. § 2071; Fed. R. Civ. P. 83(a). “[L]ocal rules generally reflect the courts’ traditional ‘authority to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’” *Reese v. Herbert*, 527 F.3d 1253, 1267–68 (11th Cir. 2008) (quoting *Hoffmann–La Roche, Inc. v. Sperling*, 493 U.S. 165, 172–73 (1989)). These rules “are effective ‘unless modified or abrogated by the judicial council of the relevant circuit.’” *Brown v. Crawford Cnty.*, 960 F.2d 1002, 1009 n.10 (11th Cir. 1992) (quoting 28 U.S.C. § 2071(c)(1)).

Here, the pertinent rules are those adopted by the United States District Court of the Northern District of Florida, where McNair filed his action.³ Local Rule 5.7(A)

³ The Northern District’s local rules were promulgated in accordance with all applicable procedural requirements and thus carry the force of law. *See* Fed. R. Civ. P. 83; 28 U.S.C. § 2071(b); N.D. Fla. R. at 2–3 (“Following the procedures outlined in Title 28, United States Code, Section 2071; Rule 83, Federal Rules of Civil Procedure; and Rule 57, Federal Rules of Criminal Procedure, the judges of this court do unanimously adopt the appended Local Rules. The appended rules

instructs a pro se prisoner bringing suit under § 1983 to use the court’s standardized civil-rights complaint form:

A party not represented by an attorney must file any of these only on a form available without charge from the Clerk or on the District’s website: a petition for a writ of habeas corpus, a motion for relief under 28 U.S.C. § 2255, or a complaint in a civil-rights case. A case is a civil-rights case if it asserts a claim under the United States Constitution or a statute creating individual rights, including, for example, 42 U.S.C. § 1983 or the Civil Rights Act of 1964. The Court need not—and ordinarily will not—consider a petition, motion, or complaint that is not filed on the proper form.

N.D. Fla. R. 5.7(A).

The complaint form, in turn, instructs the inmate to disclose his litigation history. In particular, under a heading titled “PRIOR LITIGATION,” the form provides the following directive:

This section requires you to identify your prior litigation history. Be advised that failure to disclose all prior state and federal cases—including, but not limited to civil cases, habeas cases, and appeals—may result in the dismissal of this case. You should err on the side of caution if you are uncertain whether a case should be identified.

Compl. Form at 8. The form goes on to state that the inmate should “[a]ttach additional pages as necessary to

shall, within their scope, govern all proceedings in the Northern District of Florida effective November 24, 2015.”).

list all cases.” *Id.* at 12. Separately, the form requires the inmate to provide the following “CERTIFICATION”:

I declare, under penalty of perjury, that all of the information stated above and included on or with this form, including my litigation history, is true and correct.

Id.

Importantly here, Local Rule 41.1 describes the consequences of a litigant’s failure to comply with the applicable court rules, and it expressly warns that dismissal is a possible sanction:

If a party fails to comply with an applicable rule or a court order, the Court may strike a pleading, dismiss a claim, enter a default on a claim, take other appropriate action, or issue an order to show cause why any of these actions should not be taken.

N.D. Fla. R. 41.1.

So, putting the pieces together, McNair was required to complete the standardized civil-rights complaint form, which he did. But he was also required to complete the form according to its instructions, which he did not. In describing his litigation history, although McNair used the six available spaces to list his previous cases, he didn’t attach additional pages “as necessary to list all cases” and thus omitted the two proceedings cited by the magistrate judge. The complaint form clearly stated that the “failure to disclose all prior state and federal cases”—specifically enumerating “habeas cases[] and appeals”—“may result in the dismissal of this case.” Compl. Form at 8. And the local rules likewise warn that the failure to follow an applicable rule is a ground for “dismiss[al] [of] a claim.” N.D. Fla. R. 41.1.

The bottom line: Dismissal without prejudice was an appropriate exercise of the district court’s inherent authority to manage its docket and enforce the local rules. McNair violated the local rules by failing to disclose his full litigation history, as required by the duly adopted standard complaint form. We hold that the district court did not abuse its considerable discretion when it dismissed McNair’s suit for failure to comply with the complaint form’s explicit instructions. That is so “even if we would have gone the other way had the choice been ours to make.” *United States v. Campbell*, 491 F.3d 1306, 1310 (11th Cir. 2007) (citation modified).⁴

IV

The record supports the district court’s dismissal without prejudice of McNair’s § 1983 suit under its inherent authority to manage its docket and enforce applicable local rules. Accordingly, we affirm the district court’s judgment.

AFFIRMED.

⁴ One final thing: Citing the Seventh Circuit’s decision in *Greyer v. Illinois Department of Corrections*, 933 F.3d 871 (7th Cir. 2019), McNair urges us to adopt, as part of our inherent-authority analysis, the requirements that a failure to disclose litigation history be both intentional and material. *Greyer*, though, is inapposite—that case involved the considerably more draconian sanction of dismissal *with* prejudice for committing a “fraud on the court.” *Id.* at 876. A dismissal with prejudice “go[es] to the merits of the case.” *Versa Prods., Inc. v. Home Depot, USA, Inc.*, 387 F.3d 1325, 1327 (11th Cir. 2004) (citation modified). Here, the district court imposed the far more modest sanction of dismissal without prejudice, which has no bearing on the merits. *Id.* Accordingly, a dismissal without prejudice doesn’t depend on a finding of bad faith, and can follow from unintentional or merely negligent conduct. Adopting the *Greyer* standard here would improperly superimpose the high burdens for *with*-prejudice dismissals on *without*-prejudice dismissals, thereby eliding important distinctions between the two.

NEWSOM, Circuit Judge, concurring:

I write separately to make one simple (and maybe persnickety) point: As the Court’s opinion makes clear, although this case is easily resolved on “inherent authority” grounds, the parties have spent the lion’s share of their time tangling over whether McNair’s failure to include two habeas-related cases on his standardized civil-complaint form was “malicious” within the meaning of the Prison Litigation Reform Act’s operative provisions. With respect, at least as far as the statute is concerned, that’s the wrong question.

Three provisions of the PLRA address “malicious” prisoner litigation. First, the Act requires a district court to screen any case filed by an inmate against a government defendant and to dismiss it if the “complaint” is “malicious.” 28 U.S.C. § 1915A(a)–(b). Second, it requires a district court to dismiss an indigent inmate’s suit if, as relevant here, the “action” is “malicious.” *Id.* § 1915(e)(2)(B)(i). And finally, the Act contains a “three strikes” provision that denies a prisoner the right to proceed in forma pauperis if he has previously filed—again, as relevant here—at least three “action[s]” that were dismissed as “malicious.” *Id.* § 1915(g).

These three subsections share an obvious throughline: The object of the maliciousness inquiry—*i.e.*, the thing that must be “malicious” in order to trigger the Act’s remedial provisions—is the inmate’s “complaint” or “action.” Here, the parties have overwhelmingly—perhaps even invariably—focused on the wrong object, debating whether McNair’s failure to fully disclose his litigation history on the stock form was “malicious.”

To be sure, there may well be instances in which a prisoner’s failure to list past cases on a standard form suggests that his “complaint” or “action” is itself

“malicious.” For instance, if an inmate neglects to disclose that he had previously filed a materially identical lawsuit—such that the current case is truly duplicative—that might be pretty good evidence that his “complaint” or “action” is “malicious.” *Cf. Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998), *abrogated in part on different grounds by Jones v. Bock*, 549 U.S. 199 (2007). But not every stock-form omission will have any real bearing on the action’s (or complaint’s) maliciousness. As the district court here acknowledged, for instance, the two habeas-related cases that McNair failed to disclose had no relevance to the merits of his § 1983 suit, *see* Order Accepting R. & R. at 3 & n.1, Dkt. No. 11, so it’s not clear to me why their omission says much of anything about the maliciousness of his action (or complaint).

I take the State’s point, of course, that accurate disclosure of an inmate’s litigation history facilitates the PLRA’s screening and three-strikes provisions. My rejoinder—which finds support in analogous Supreme Court precedent—is simply that we must take the Act as we find it, and, for better or worse, it provides for dismissal of a prisoner’s case only where his “complaint” or “action” is *itself* “malicious”—not where some other (even related) conduct might be. *Cf. Jones*, 549 U.S. at 202–03 (rejecting as “not required by the PLRA” a court-created rule requiring inmates to affirmatively demonstrate in their complaints that they had exhausted prison remedies, despite the fact that it might “facilitate early judicial screening” under the Act).¹

¹ And of course, as the main opinion’s discussion of inherent authority makes clear, district courts have other tools at their disposal to address prisoners’ litigation misconduct, whether the result of bad faith or otherwise. *See* Maj. Op. at 8–9; *see also, e.g.*, Fed. R. Civ. P. 11, 41.

BRASHER, Circuit Judge, concurring:

I concur in full. I write separately to address why I believe we are correct not to review the district court's declaration that its dismissal of McNair's lawsuit was a "strike" under the Prisoner Litigation Reform Act.

The district court dismissed McNair's lawsuit without prejudice to being refiled. But, instead of refiling, McNair appealed. According to his counsel at oral argument, McNair chose to appeal in large part because the district court declared that its dismissal would count as a "strike" in any future lawsuit that McNair filed. Under the PLRA, a prisoner cannot litigate *in forma pauperis* if, "on 3 or more prior occasions," a court dismissed a previous lawsuit he filed as frivolous, malicious, or for failure to state a claim. 28 U.S.C. §§ 1915(g), 1915A. It was, therefore, important to McNair that we address whether the district court properly labeled this dismissal as a PLRA "strike." But, because we affirm the dismissal based on the district court's inherent authority, our opinion doesn't answer the "strike" question one way or another. Maj. Op. at 9 n.2.

McNair may be disappointed that we did not address the district court's "strike" declaration. But, because we'd have to affirm the dismissal on other grounds no matter what we thought about the PLRA, I don't think this issue is properly before us.

First, it's not ripe. The PLRA's three-strike penalty is triggered only when a new complaint is filed after a third dismissal. Although three strikes have serious consequences for a prisoner-litigator, a single strike has none. The upshot is that the question whether a dismissal counts as a "strike" under the PLRA is ripe for appellate review only when a district court denies a prisoner IFP status as a PLRA sanction. And we routinely review the

question in that procedural posture. *See Wells v. Brown*, 58 F.4th 1347, 1350 (11th Cir. 2023) (en banc); *Daker v. Jackson*, 942 F.3d 1252, 1256–57 (11th Cir. 2019); *Daker v. Comm'r, Georgia Dep't of Corr.*, 820 F.3d 1278, 1283 (11th Cir. 2016); *Rivera v. Allin*, 144 F.3d 726, 730-32 (11th Cir. 1998).

Because McNair has not been denied IFP status, it is premature to assess whether this dismissal counts as a strike under the PLRA. *See Gonzalez v. United States*, 23 F.4th 788, 791 (8th Cir. 2022) (no jurisdiction over appeal that challenged only strike designation, not underlying dismissal); *Pitts v. South Carolina*, 65 F.4th 141, 150 (4th Cir. 2023) (Richardson, J., dissenting) (same). The district court's designation of this dismissal as a "strike" may never affect McNair. Right now, based on his representations, McNair has *maybe* one strike. We don't know whether he will ever file another complaint, how many he may file, whether those complaints will be dismissed, what the reasons for dismissal may be, or how future district courts will assess his litigation history. "The bottom line is that the district court's statement will only make a difference, if at all, once [McNair] has passed the three-filings threshold, and even then, only if all three were dismissed. Then, and only then, will the number of strikes be ripe for adjudication." *Gonzalez*, 23 F.4th at 791 (citation omitted).

Second, the district court's strike declaration doesn't control this issue going forward. The district court's statement isn't binding on any future judge—trial or appellate—if McNair's IFP status is ever threatened. "[T]he task of counting strikes involves more than sophomoric arithmetic." *Rivera*, 144 F.3d at 726. Instead, when asked to apply the three-strikes sanction, a court must determine for itself "whether the reason for the [three prior] dismissals were frivolousness, maliciousness

or failure to state a claim upon which relief may be granted.” *Id.*

To be clear, it may be wise for a district court to include this kind of forward-looking “strike” statement in a dismissal order. A district judge’s contemporaneous declaration that a dismissal should count as a “strike” may be helpful for a future strike-counting judge. It may also help the clerk’s office keep track of frequent filers who are at risk of losing IFP privileges. But it obviously doesn’t control what a future judge does. After all, “a district court’s decisions do not bind other district courts, other judges on the same court, or even the same judge in another case.” *Georgia v. President of the United States*, 46 F.4th 1283, 1304 (11th Cir. 2022).

I also don’t think our court could definitively resolve this issue for a future court, even if we wanted to. Consider the posture of this case. The district court said that its dismissal counts as a strike under our precedent in *Rivera*, but it also said that it would *not* count as a strike under the caselaw of other circuits. *See* Doc. 11 at 3 n.1 (citing *Greyer v. Illinois Dep’t of Corr.*, 933 F.3d 871, 880 (7th Cir. 2019)). Judge Newsom’s concurring opinion disagrees with the district court’s reading of *Rivera*. But let’s assume the district court was right. We don’t know what the state of the law will be at the hypothetical future point when McNair gets his two additional strikes, files his fourth lawsuit, and is denied IFP. The Supreme Court could have adopted another circuit’s approach by then. Or we could have overruled *Rivera* en banc. (It’s happened before. *See Wells*, 58 F.4th at 1350.) Any ruling we made on this issue now would be a prediction or guess about how we would rule if the issue arose in the future—nothing more.

In short, although McNair apparently pursued this appeal to resolve the “strike” issue, we are constrained to disappoint him. He should take solace in knowing that the district court’s strike declaration is not binding on any judges who may have to evaluate his IFP status in the future. And he can appeal anew if a district court in the future denies him IFP status based on the dismissal in this case.

APPENDIX B

[FILED: DECEMBER 28, 2023]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JAMES E. MCNAIR,

Plaintiff,

v.

K. JOHNSON,

Defendant.

Case No.: 4:23cv505-
MW/MAF

**ORDER ACCEPTING REPORT AND
RECOMMENDATION**

This Court has considered, without hearing, the Magistrate Judge's Report and Recommendation, ECF No. 9, and has also reviewed *de novo* Plaintiff's objections, ECF No. 10.

The Magistrate Judge recommends that Plaintiff's case be dismissed without prejudice as malicious under 28 U.S.C. § 1915(e)(2)(B)(i) because he failed to disclose two prior federal habeas cases—namely, federal case M.D. Fla. No. 5:10-cv-00638-MSS-PRL (a 28 U.S.C. § 2254 petition) and his appeal in federal case M.D. Fla. No. 5:21-cv-82-SPC-PRL (another § 2254 petition). ECF No. 9 at 6. In his objection, Plaintiff concedes that he failed to disclose federal case M.D. Fla. No. 5:10-cv-00638-MSS-PRL. ECF No. 10 at 1. Plaintiff disputes, however, that he failed to follow the form complaint's instructions by failing to failure to disclose his appeal in M.D. Fla. No. 5:21-cv-82-SPC-PRL. Specifically, Plaintiff argues that he was not required to disclose his appeal in that case in his

response to the form complaint's prompt in section VIII.C. because, in his view, it was not an appeal challenging his conviction. *See id.* at 2.

Plaintiff's objection fails. The prompt in section VIII.C. of the form complaint specifically asks the litigant to disclose "any other lawsuit, habeas corpus petition, *or appeal* in state or federal court either challenging your conviction or relating to the conditions of your confinement[.]" ECF No. 1 at 15 (emphasis added). The underlying habeas petition qualifies as a case "challenging your conviction or relating to the conditions of your confinement," so any "appeal" from a denial of that habeas petition merits disclosure under this section as well. Plaintiff failed to disclose two previous federal cases, which merits dismissal without prejudice under 28 U.S.C. § 1915(e)(2)(B)(i) as malicious. Other district courts have explained why accurate disclosure of past litigation is important.

[Information about previously filed cases] is also necessary for the court to determine, prior to service, whether a prisoner's claims are related to (or should be considered in connection with) another pending action and—more importantly—whether any claims or issues in the current complaint have already been decided. *Williams v. Wiggins*, No. 6:09-cv-943, 2010 WL 4983665, at *2 (M.D. Fla. Dec. 2, 2010). Reliable disclosures are thus essential for an efficient and effective screening of the large number of *pro se* prisoner complaints received by this Court. *See* 28 U.S.C. § 1915A(a). And, as other courts within this Circuit have reasoned, if *pro se* plaintiffs suffered no substantial penalty for providing false or misleading information in the complaint, "there would be little or no disincentive" for

prisoners to attempt to evade the requirement that such disclosures be made. *Williams*, 2010 WL 4983665 at *4 (internal quotation marks omitted); *see also Hood v. Tompkins*, 197 F. App'x 818, 819 (11th Cir. 2006) (per curiam) (agreeing with district court's conclusion that allowing prisoner to “acknowledge what he should have disclosed earlier would serve to overlook his abuse of the judicial process”).

Cochran v. Moore, No. 7:21-CV-00129-HL-TQL, 2021 WL 5985324, at *3 (M.D. Ga. Nov. 10, 2021), *report and recommendation adopted*, 2021 WL 5985321 (M.D. Ga. Dec. 16, 2021).¹ Accordingly,

IT IS ORDERED:

1. The report and recommendation, ECF No. 9, is **accepted and adopted**, over Plaintiff's objections, as this Court's opinion.
2. The Clerk shall enter judgment stating, “Plaintiff's complaint, ECF No. 1, is **DISMISSED without prejudice** as malicious under 28 U.S.C. § 1915(e)(2)(B)(i) because Plaintiff affirmatively misrepresented his federal litigation history under the penalty of perjury.”

¹This Court is cognizant that other circuits require that, in order to qualify as malicious under § 1915(e)(2)(B)(i), a *pro se* prisoner litigant's omission of a prior lawsuit must be material. *See, e.g., Greyer v. Illinois Dep't of Corr.*, 933 F.3d 871, 880 (7th Cir. 2019). Plaintiff's omissions here appear to fall below this materiality standard, as neither of his omitted cases seem to bear on his present 42 U.S.C. § 1983 claims. The Eleventh Circuit, however, does not yet require that an omitted suit be material before a case can be dismissed as malicious under § 1915(e)(2)(B)(i). *Cf. Jackson v. Fla. Dep't of Corr.*, 491 F. App'x 129, 132 (11th Cir. 2012).

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3. The Clerk shall note on the docket that this cause was dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and counts as a strike.
4. The Clerk shall close the file.

SO ORDERED on December 28, 2023.

s/Mark E. Walker

Chief United States District Judge

APPENDIX C

[FILED: DECEMBER 11, 2023]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JAMES E. MCNAIR,

Plaintiff,

vs.

Case No. 4:23-cv-00505-
MW-MAF

K. JOHNSON,

Defendants.

_____ /

REPORT AND RECOMMENDATION

Plaintiff, James E. McNair, a prisoner proceeding *pro se* and *in forma pauperis*, initiated this case with a civil rights complaint, pursuant to 42 U.S.C. § 1983. ECF No. 1. The court screened the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and 28 U.S.C. § 1915A. The court may review a complaint and dismiss it, or any part thereof, if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. *See* 28 U.S.C. § 1915A. Dismissal is proper because Plaintiff failed to truthfully disclose his federal litigation history.

I. Standard of Review

A federal court conducts an initial screening of a *pro se* complaint to determine whether the action: (1) is frivolous or malicious or fails to state a claim on which relief may be granted, or (2) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). “An action is malicious when a prisoner misrepresents his prior litigation history on a complaint

form requiring disclosure of such history and signs the complaint under penalty of perjury. . .” *Burrell v. Moore*, 854 F. App’x 624 (11th Cir. 2021); *See Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998) (affirming counting as a strike under § 1915(g) an action that was dismissed for an abuse of the legal process because the inmate lied under penalty of perjury about a prior lawsuit), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007); *see also, e.g., Sears v. Haas*, 509 F. App’x 935, 935-36 (11th Cir. 2013) (dismissal of action without prejudice as malicious for abuse of judicial process was warranted where inmate failed to disclose case he had filed against prison officials just five months earlier, and failed to disclose another case he filed six years earlier that had been dismissed prior to service for failure to state a claim); *Jackson v. Fla. Dep’t of Corr.*, 491 F. App’x 129, 132-33 (11th Cir. 2012) (dismissal of action without prejudice as malicious for prisoner plaintiff’s abuse of judicial process was warranted where plaintiff failed to disclose existence of one prior case, and disclosed existence of another prior case but still failed to disclose that it was dismissed as frivolous, malicious, failing to state a claim, or prior to service).

Federal courts have the inherent authority to *sua sponte* dismiss cases in order to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R. Co.*, 370 U.S. 626, 631 (1962). A district court “has inherent authority to manage its own docket ‘so as to achieve the orderly and expeditious disposition of cases.’” *Equity Lifestyle Props., Inc. v. Fla. Mowing and Landscape Servs., Inc.*, 556 F.3d 1232, 1240 (11th Cir. 2009) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991)). This court must ensure that its limited resources are allocated in such a manner as to protect and promote the interests of justice. Thus, a case in which a

plaintiff has maliciously abused the judicial process, warrants dismissal.¹

II. Plaintiff's Initial Complaint, ECF No. 1.

Plaintiff sued K. Johnson, a female nurse practitioner at Liberty Correctional Institution, solely in her individual capacity. ECF No. 1, pp. 1-2. Plaintiff alleged that for several years, he was treated for sarcoidosis, which affects his lungs. *Id.*, pp. 5-7. Numerous tests confirmed Plaintiff's diagnosis. *Id.*, p. 5. Plaintiff received breathing treatments, prednisone, and prescription inhalers. *Id.*, p. 5-6. According to Plaintiff, the inhalers were not effective, but the prednisone worked. Over some years, doctors gradually decreased the dosage; and Defendant eventually discontinued Plaintiff's prescription altogether in 2020. *Id.*, pp. 5-7.

Plaintiff had a persistent cough and difficulty breathing. *Id.*, p. 7. Plaintiff claims that by December 2022, his condition deteriorated so much so that he was hospitalized. *Id.*, pp. 7-8. Doctor Webster informed Plaintiff he had an enlarged heart and showed signs of heart disease. *Id.*, p. 8. A pulmonologist informed Plaintiff his sarcoidosis progressed to the point he likely needed oxygen. *Id.* Defendant still refused to prescribe Plaintiff prednisone. *Id.* Defendant diagnosed Plaintiff with an aneurism on his heart, but the hospital physician told Plaintiff it was a large lymph node caused by sarcoidosis and prescribed prednisone. *Id.*, p. 9. A few weeks later,

¹ In general, a dismissal without prejudice does not amount to abuse of discretion. See *Dynes v. Army Air Force Exch. Serv.*, 720 F.2d 1495, 1499 (11th Cir. 1983) (holding that dismissal without prejudice, even for a minor violation of a court order, was not an abuse of discretion). Such a dismissal should be allowed absent some plain prejudice other than the mere prospect of a second lawsuit. See *Kotzen v. Levine*, 678 F.2d 140 (11th Cir. 1982).

Defendant discontinued the prednisone. *Id.*, p. 10. Plaintiff alleges he was able to obtain prednisone while housed at other institutions including Lake Butler Reception and Medical Center. *Id.*, pp. 5, 10.

Plaintiff alleges Defendant was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. *Id.*, p. 11. Plaintiff seeks \$300,000 in compensatory damages and \$150,000 in punitive damages. *Id.*, pp. 11-12. Plaintiff did not fully disclose his federal litigation history. *Id.*, pp. 14-17.

III. Plaintiff's Affirmative Misrepresentation.

Plaintiff's *pro se* status does not excuse him from conforming to the rules governing these proceedings. If the court cannot rely on the statements or responses made by the parties, the quality of justice is threatened. The court will not tolerate false responses or statements in any pleading or motion filed before it. Here, Plaintiff signed the complaint under the penalty of perjury. ECF No. 1, pp. 17-18.

“Section VIII, Prior Litigation,” on the complaint, provides the following warning:

This section requires you to identify your prior litigation history. Be advised that failure to disclose all prior state and federal cases—including, but not limited to civil cases, habeas cases, and appeals—may result in the dismissal of this case. You should err on the side of caution if you are uncertain whether a case should be identified.

Id., p. 13.

Question C asks, “Have you filed any other lawsuit in ***state or federal court*** either challenging your conviction

or relating to the conditions of your confinement?” *Id.*, p.15. Plaintiff answered, “Yes.” *Id.* Plaintiff listed cases from Florida’s Fifth District Court of Appeals and Marion County Circuit Court. *Id.*, p. 16 Plaintiff also listed two federal cases in which he sought habeas relief pursuant to 28 U.S.C. § 2254: M.D. Fla. No. 5:21-cv- 82-SPC-PRL, *McNair v. Sec’y, Fla. Dep’t of Corr.* and M.D. Fla. 5:10-cv-00638-MSS-PRL, *McNair v. Sec’y Fla. Dep’t of Corr.* *Id.*, pp. 16-17. However, there are at least two other federal cases Plaintiff failed to disclose.

First, Plaintiff did not disclose federal case M.D. Fla. No. 5:10-cv-00638-MSS-PRL in which he first sought habeas relief. The court dismissed the case the next day as premature. M.D. Fla. No. 5:10-cv-00638-MSS-PRL, *McNair v. Sec’y, Fla. Dep’t of Corr.*, et al, D.E. No. 2. Three months later, Plaintiff filed a second habeas petition, which he did disclose, namely, M.D. Fla. No. 5:10-cv-00638-MSS-PRL.

Second, Plaintiff did not disclose his appeal of M.D. Fla. No. 5:21-cv-82-SPC-PRL, *McNair v. Sec’y, Fla. Dep’t of Corr.* Plaintiff moved for leave to file an out-of-time motion for reconsideration of the Eleventh Circuit’s order issued in June 2023, denying a certificate for appealability. Given the recency of this appellate decision, there is no reason Plaintiff could not disclose the case information. This court will not provide the case information for this appeal or other cases, if any, because it is Plaintiff’s obligation to do so. Suffice to say, Plaintiff did not disclose either case and is required to do so.

Plaintiff knew that accurate disclosure of his litigation history is required; and dismissal of the instant action might result from any untruthful answers to this section of the complaint form. If Plaintiff suffered no penalty for his untruthful responses to the questions on

the complaint form, there would be little or no disincentive for his attempt to evade or undermine the purpose of the form. Furthermore, if word spread around the prisons that the questions on the complaint form could be circumvented in such a manner, the court might be confronted with widespread abuse from its many prisoner litigants. Therefore, this court should not allow Plaintiff's misrepresentations to go unpunished.

An appropriate sanction for Plaintiff's abuse of the judicial process in not providing the court with true factual statements or responses is dismissal without prejudice. *See Rivera*, 144 F.3d at 731 (dismissal of an action without prejudice as a sanction for a *pro se* prisoner's failure to disclose the existence of a prior lawsuit, where that prisoner was under penalty of perjury, is proper); *Jackson*, 491 F. App'x at 132-33 (dismissal of action without prejudice as malicious for prisoner plaintiff's abuse of judicial process was warranted where plaintiff failed to disclose one prior case, and disclosed another prior case but not that it was dismissed as frivolous, malicious, failing to state a claim, or prior to service).

IV. Conclusion and Recommendation

It is respectfully **RECOMMENDED** that this case be **DISMISSED WITHOUT PREJUDICE** as malicious because Plaintiff affirmatively misrepresented his federal litigation history under the penalty of perjury. It is also recommended that the case be **CLOSED** and that the Order adopting this Report and Recommendation direct the Clerk of Court to note on the docket that this cause was dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and counts as a strike.

IN CHAMBERS at Tallahassee, Florida, on
December 11, 2023.

s/ Martin A. Fitzpatrick
MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Within fourteen (14) days after being served with a copy of this Report and Recommendation, a party may serve and file specific written objections to these proposed findings and recommendations. Fed. R. Civ. P. 72(b)(2). A copy of the objections shall be served upon all other parties. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b)(2). Any different deadline that may appear on the electronic docket is for the Court's internal use only and does not control. If a party fails to object to the Magistrate Judge's findings or recommendations as to any particular claim or issue contained in this Report and Recommendation, that party waives the right to challenge on appeal the District Court's order based on the unobjected-to factual and legal conclusions. *See* 11th Cir. Rule 3-1; 28 U.S.C. § 636(b)(1)(C).

APPENDIX D

[FILED: SEPTEMBER 8, 2025]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-10153

JAMES E. MCNAIR,

Plaintiff-Appellant,

versus

K. JOHNSON,
Nurse Practitioner,

Defendant- Intervenor-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:23-cv-00505-MW-MAF

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

Before NEWSOM, BRASHER, and WILSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

APPENDIX E

28 U.S.C. § 1915. Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of--

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized

by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(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.

(h) As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

APPENDIX F

28 U.S.C. § 1915A. Screening

(a) Screening.--The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

(c) Definition.--As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

APPENDIX G

[FILED: NOVEMBER 27, 2023]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

**CIVIL RIGHTS COMPLAINT FORM FOR
PRO SE PRISONER LITIGANTS IN ACTIONS
UNDER
28 U.S.C. § 1331 or § 1346 or 42 U.S.C. § 1983**

James E. McNair _____,

Inmate ID Number: 64009,

*(Write your full name and
inmate ID number.)*

v.

K. Johnson _____,
_____,

*(Write the full name of each
Defendant who is being
sued. If the names of all the
Defendants cannot fit in the
space above, please write
“see attached” in the space
and attach an additional
page with the full list of
names. Do not include
addresses here.)*

_____ /

Case No.: 4:23-cv-505

MW/MAF

(To be filled in by the
Clerk’s Office)

Jury Trial Requested?

YES NO

I. PARTIES TO THIS COMPLAINT

A. Plaintiff

Plaintiffs Name: James E. McNair ID Number:
640091

List all other names by which you have been
known: _____

Current Institution: Gulf correctional
Institution

Address: 50 Ike Steele Road
Wewahitchka Florida 32465

B. Defendant(s)

State the name of the Defendant, whether an individual, government agency, organization, or corporation. For individual Defendants, identify the person's official position or job title, and mailing address. Indicate the capacity in which the Defendant is being sued. Do this for **each and every** Defendant:

1. Defendant's Name: K. Johnson
Official Position: Nurse Practitioner
Employed at: Liberty Correctional Institute
Mailing Address: 11064 N.W. Dempsey
Barron Rd
Bristol Florida 32321-9711

Sued in Individual Capacity Sued in Official
Capacity

2. Defendant's Name: _____
Official Position: _____
Employed at: _____
Mailing Address: _____

Sued in Individual Capacity Sued in Official Capacity

3. Defendant's Name: _____
Official Position: _____
Employed at: _____
Mailing Address: _____

Sued in Individual Capacity Sued in Official Capacity

(Provide this information for all additional Defendants in this case by attaching additional pages, as needed.)

II. BASIS FOR JURISDICTION UNDER 28 U.S.C. § 1331 or § 1346

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution” and federal law. Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

Are you bringing suit against (*check all that apply*):

Federal Officials (*Bivens case*) State/Local Officials (§ 1983 case)

III. PRISONER STATUS

Indicate your confined status:

<input type="checkbox"/> Pretrial Detainee	<input type="checkbox"/> Civilly Committed Detainee
<input checked="" type="checkbox"/> Convicted State Prisoner	<input type="checkbox"/> Convicted Federal Prisoner

Immigration
 Detainee

Other (*explain
 below*):

IV. STATEMENT OF FACTS

Provide a short and plain statement of the **facts** showing why you are entitled to relief. Describe how **each** Defendant was involved and what each Defendant did, or did not do, in support of your claim. Identify when and where the events took place, and state how each Defendant caused you harm or violated federal law. Write each statement in short, numbered paragraphs, limited as far as practicable to a single event or incident. **Do not make legal arguments, quote cases, cite statutes, or reference a memorandum.** You may make copies of page 6 if necessary to supply all the facts. Barring extraordinary circumstances, no more than five (5) additional pages should be attached. Exhibits attached to the complaint will count as part of your page limitation. Therefore, do not attach irrelevant or unnecessary exhibits. Facts not related to this same incident or issue must be addressed in a separate civil rights complaint.

[1] I was transferred to Lake butler Medical center in 2015. A xray, MRI, biopsy and breathing treatment and test were done.

[2] I was later seen by Pulmonologist Patel who informed me that I had a disease called sarcoidosis and it was effecting my lungs, also that it could effect other organs. He told me that is usually went away after being treated with Predinsone.

[3] He perscribed 20 miligrams of predinsone to be taken daily. He also prescribed inhalers xpenex and Alvesco. He told me that after takeing the predisone for a couple weeks I should feel better.

[4] A couple weeks after taking the predinsone medication my coughing stop and I begin to function normally

[5] After returning back to Liberty correctional I was weaned off the predinsone medication.

[6] Several months later approximatly, I begin to develope a persistent cough. I accessed medical through sickcall and complained about my cough coming back. I was told to use my inhalers. I explained to the medical staff that I had been using them but they were not working. A Doctors Appointment was scheduled

[7] Shortly afterward I was seen by Doctor John Doe 1. I explained to him that the persistent cough had come back, and the inhalers were not working. He reperscribed 10 miligrams of predinsone, a few weeks later I stop coughing

[8] In 2018 I was transfered to Marion correctional Institution, I was later seen by Doctor Johe Doe 2 who decreased my predinsone from 10 milgrams to 5 miligrams.

[9] Several weeks later I started developing a cough. I accessed medical through sickcall. I was again seen by Doctor John Doe 2. I explained to him I was starting to cough again. He then increased the predinsone back to 10 miligrams. He discontinued the inhalers xpenex and Alvesco. A few weeks later my cough stopped.

[10] Around October 2020 I was transformed back to liberty correction. Shortly afterward Nurse Practitioner K. Johnson discontinued my predinsone perscription without weaning me off it.

[11] Approximately a few weeks after the predinsone prescription was discontinued I accessed medical through sickcall complaining about developing a persistent cough.

[12] A couple weeks after the sickcall I was seen by Nurse Practitioner K. Johnson. I explained to her about my persistent cou and how I been using predinsone since 2015 to treat my disea which was causing the cough. Nurse Practitioner K. Johnson tol me she was not perscribing me any predinsone because I h been on it to long, and that she was going to reorder the inhalers, xpenex and Alvesco inspite of me telling her they did work.

[13] In December 2020 I start having problems breathing along with the persistent cough. It became difficult for me walk to chow, in addition to this I was forced to work i food service. I accessed medical multiple times from food sevice complaining about my breathing and cough. I also complained to food service staffs that the exertion was making it h for me to breath. Food service staffs told me that I had to take it up with medical. However most of the times food-service would send me back to the dorm. (Security video syst could varify this statement.)

[14] Around the end of December 2022 my condition deteriorated to the point where I had to be rushed to Tallahassee memorial Hospital, I remained in the hospital 6 days. Heart test and a biopsy were done.

[15] I was later seen by a Doctor Webster who informed me that I had a enlarged heart and was starting to show signs of heart disease.

[16] I was also seen by pulmonologist Otekeiweba who explained to me that my sarcoidosis had progressed to the point where I may need to be placed permanently on oxygen. I explained to him how Nurse Practitioner K. Johnson refuse to perscribe me predinsone. He told me he didnt see why she would not order predinsone if it had been effective in treating and slowing the progression of my disease.

[17] Pulmonologist told me that he hadnt reviewed all the test result, and that he would talk to me after the holidays, however before any recommendation were done by him I was transfered back to Liberty Correctional.

[18] A few weeks later the predinsone that was perscribe at the Hospital was discontinued by Nurse Practitioner K. Johnson.

[19] On 3/14/21 I filed a Informal Grievance to the warden complainin about how Nurse Practitioner K. Johnson discontinued my predinsone medication and the flare ups was causing damage to my lungs. I explained in the Grievance that I had been using the predinsone to treat my disease since 2015. I al explained that the inhalers xpenex an Alvesco were not working. I asked in the Remedy that I be reperscribed predinson

[20] This Informal Grievance was denied on 3/22/21 by Ginna T. Harr (Health service administrator)

[21] I appeal this denial to the warden on a Formal Grievance on 3/29/21. On 4/7/21 this Formal Grievance was denied by Doctor Hernandez-Perez (Regional medical Director) and Assista Warden S. Ponder.

[22] On 4/26/21 I appealed this denial to the secretary of Florida Department of Correction. Appeal was denied on 6/1/21

[23] Around the summer of 2021 I was standing in line after eating lunch when Lieutenant Pottier, (she was the Grievance coordinator) asked me what was wrong because the way I was looking. She asked me did I have high blood pressure. I told her I did not. She then asked me did I want to go to medical. I told her that medical was not doing anything to address my condition. She escorted me to medical, my O2 saturation was checked and it read in the low 80s. I was then given a steroid shot and a breathing treatment, then sent back to the dorm. (Security video system can verify this statement)

[24] About a month later (approximately) I was walking to chow and pastout because my O2 saturation dropped too low. I was taken to medical, my O2 saturation was checked and it read in the low 80 I was given a steroid shot and admitted into the Infirmary and placed on oxygen.

[25] I later received a xray. Nurse Practitioner K. Johnson informed me that the xray showed what appeared to her as an aneurism on my aorta. She warned that I needed to control my coughing and sudden movements because it could cause the aneurism to rupture, and I would die.

[26] Several days later I received a MRI at Liberty, Calhun Hospital. The MRI finding was that there was no aneurism.

[27] For a second opinion I was sent to Doctor Noels office at Tallahassee Memorial Hospital where I received a MRI. The Physician Jane Doe 1 informed me that what Nurse Praction K. Johnson thought was an aneurism was infact a long lymph node caused by the sarcoidosis. She told me that she ordering 10 miligrams of predinsone. She also told me that I need to remain on oxygen. (This statement can be varified by correctional sergeant Edwards who conducted the transport)

[28] Several weeks later the predinsone medication was discontinued by Nurse Practitioner K. Johnson.

[29] At this point I was rarely able to walk to chow so I missed man meals. It was also extreemly difficult to take a showe withou oxygen. Sometime food service would deliver my meals to the dorm because it was known that I could not walk to chow. (Security video could varify this statement.)

[30] On 12/13/21 I filed an Emergency Informal Grievance to the warden explaining my physical circumstances and my medical situation. I asked the the administration intervene because I needed to improve my quality of life, I also informed him tha I needed access to oxygen.

[31] This Informal Grievance was denied on 12/14/21 by Ginna Harris (Health service Administrator)

[32] I appeal this denial on 12/28/21

[33] Around the beginning of 2022 I declared a medical emergency 1.am in the morning complaining of shortness of breath. In spite of having shortness of breath I was forced to walk to medical during which time I passed out trying to walk there. I was then admitted into the Infirmary and placed on oxygen.

[34] Around spring of 2022 I was transferred to Lake Bulter medical center. I was admitted into the Infirmary and placed on oxygen and 20 milligrams of prednisone.

[35] A xray, MRI, and a breathing test were done. I was later seen by Pulmonologist Patel who told me that my disease had progressed and he was ordering that I remain on oxygen and 20 milligrams of prednisone to slow the progression of my disease.

V. STATEMENT OF CLAIMS

State what rights under the Constitution, laws, or treaties of the United States have been violated. Be specific. If more than one claim is asserted, number each separate claim and relate it to the facts alleged in Section IV. If more than one Defendant is named, indicate which claim is presented against which Defendant.

Plaintiff adopts, incorporates and realleges all facts and allegations set forth in paragraphs 13 through 33 as they constitute a violation of Plaintiff eighth amendment right of the United States Constitution prohibiting against cruel and unusual punishment pertaining to Nurse Practitioner K. Johnson Diliberate Indifference to Plaintiff's serious medical need for prednisone medication to treat and slow the progression of Plaintiff sarcoidosis.

VI. RELIEF REQUESTED

State briefly what relief you seek from the Court. Do not make legal arguments or cite to cases/ statutes. If requesting money damages (*either actual or punitive damages*), include the amount sought and explain the basis for the claims.

Plaintiff seek compensatory damages in the amount of \$300,000 for Nurse Practitioner K. Johnson Diliberate Indifference to Plaintiffs serious medical need for predinone because it caused it resulted in Plaintiff 1 suffering a agonizing persistent cough for almost two years 2 Forcing Plaintiff too suffer from walking to medical, to chow and to work at food service inspite of Knowing that Plaintiff O2 saturation would drop with exertion thus causin Plaintiff to also suffer psychological and emotional stress 3. Plaintiff suffered psychological and emotional stree aft being placed in a medical isolation cell and caused to believe by Nurse Practitioner K. Johnson that Plaintiff could possibly have aneurism on Plaintiff aorta, and tha coughing or a sudden movement could cause it to rupture and result in Plaintiffs death. 4. Nurse Practioner K. Johnson omission ultimatly caused irreparable damage to my lungs resulting in Plaintiff t be permanently housed in an institution Infirmery in need of oxygen 24/7, as well as in need of a wheele chair when moving outsid the Infirmery.

Plaintiff seeks punitive damage in the amount of \$150,000 because Nurse Practioner K. Johnson Knew that Plaintiff had been diagnosed since 2015 with sarcoidosis and that a Pulmologist ha perscribed predinone to treat Plaintiffs disease which had lead to Plaintiffs recovery; Nurse Practioner K. Johnson failed to follow a perscribed treatment ordered by a

specialist; Failed to have Plaintiff evaluated by a lung specialist in time, in spite of seeing all the sign that Plaintiffs sarcoidosis was progressing. Nurse Practitioner omission resulted in irreparable damage to Plaintiffs lungs which effects Plaintiffs ability to function normally.

VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

The Prison Litigation Reform Act (“PLRA”) requires prisoners to exhaust all available administrative remedies (*grievance procedures*) before bringing a case. 42 U.S.C. § 1997e(a). **ATTENTION: *If you did not exhaust available remedies prior to filing this case, this case may be dismissed.*** If the case is dismissed for failure to exhaust or for any reason, you will still be required to pay the full filing fee and the dismissal may count as a “strike” under 28 U.S.C. § 1915(g). Therefore, please consider whether you have fully exhausted your remedies before proceeding with this action.

VIII PRIOR LITIGATION

This section requires you to identify your prior litigation history. Be advised that failure to disclose all prior state and federal cases—including, but not limited to civil cases, habeas cases, and appeals—may result in the dismissal of this case. You should err on the side of caution if you are uncertain whether a case should be identified.

ATTENTION: *The “three strikes rule” of the PLRA bars a prisoner from bringing a case without full payment of the filing fee at the time of case initiation if the prisoner has “on three 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).

- A. Have you had any case in federal court, including federal appellate court, dismissed as frivolous, as malicious, for failure to state a claim, or prior to service?

YES NO

If “Yes,” identify the case number, date of dismissal, and court for each case:

1. Date: _____ Case #: _____
Court: _____
Reason: _____
2. Date: _____ Case #: _____
Court: _____
Reason: _____
3. Date: _____ Case #: _____
Court: _____
Reason: _____

(If necessary, list additional cases on an attached page)

- B. Have you filed other lawsuits or appeals in ***state or federal court*** dealing with the same facts or issue involved in this case?

YES NO

If “Yes,” identify the case number, parties, date filed, result (*if not still pending*), name of judge, and court for each case (*if more than one*):

1. Case #: _____ Parties: _____
Court: _____ Judge: _____
Date Filed: _____ Dismissal Date (*if not pending*): _____
Reason _____

2. Case #: _____ Parties: _____
Court: _____ Judge: _____
Date Filed: _____ Dismissal Date (*if not pending*): _____
Reason _____

(If necessary, list additional cases on an attached page)

C. Have you filed any other lawsuit, habeas corpus petition, or appeal in **state or federal court** either challenging your conviction or relating to the conditions of your confinement?

YES NO

If "Yes," identify all lawsuits, petitions and appeals:

1. Case #: 5D 08-4086 Parties: State of Florida
Court: Fifth District Court of Appeal FLA
Judge: N/A
Date Filed: 12/1/2008 Dismissal Date (*if not pending*): 10/2/2009
Reason: No opinion

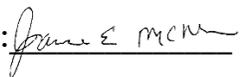
2. Case #: 1010-2007 Parties: State of Florida
Court: Circuit court for Marlon County
Judge: Eddy
Date Filed: 5/12/2010 Dismissal Date (*if not pending*): 8/3/2010
Reason: Insufficiently Plead

3. Case #: 5:11-cv-638 MSS Parties: Secretary,
Department of Correction
Court: United Stat District Court Middle
District Florida Judge: Mary Srieven
Date Filed: 12/10/2010 Dismissal Date (*if
not pending*): 3/27/2014
Reason: Granted
4. Case #: 5D-14-3204 Parties: State of Florida
Court: Fifth District Court of Appeals, FLA
Judge: N/A
Date Filed: 9/5/2014 Dismissal Date (*if not
pending*): 8/4/2015
Reason: No opinion
5. Case #: 1010-2007 Parties: State of Florida
Court: Circuit court for Marlon County FLA
Judge: Staincil
Date Filed: 3/31/2016 Dismissal Date (*if not
pending*): 10/11/2016
Reason: Failed to establish PreJuduce.
6. Case #: 5:21-cv-82 SPC Parties: Secretary
Department of Correction Fla
Court: United States District Court Middle
District Florida Judge: Sheripolster
Chappell
Date Filed: 2/14/2021 Dismissal Date (*if not
pending*): 11/14/2022
Reason: Claims were without merit.

***(Attach additional pages as necessary to
list all cases.)***

IX. CERTIFICATION

1. I declare, under penalty of perjury, that all of the information stated above and included on or with this form, including my litigation history, is true and correct.
2. Additionally, as required by Federal Rule of Civil Procedure 11, I certify that to the best of my knowledge, information, and belief, this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.
3. I understand it is my obligation to timely notify the Clerk's Office if there is any change to my mailing address and that my failure to do so may result in a dismissal of the action.

Date: 11/21/23 Plaintiff's Signature: 

Printed Name of Plaintiff: James E McNair

Correctional Institution: Gulf correctional Institution

Address: 500 Ike Steele Road
Wewahitchka, Florida 32465

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I certify and declare, under penalty of perjury, that this complaint was (*check one*) delivered to prison officials for mailing or deposited in the prison's mail system for mailing on the 21 day of 11, 2023.

Signature of Incarcerated Plaintiff: 