NO SWORD, NO SHIELD, NO PROBLEM: AI IN PRO SE SECTION 1983 SUITS

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Originating during the Reconstruction era, 42 U.S.C. 1983 emerged as a legislative tool to safeguard individuals' constitutional rights and liberties. Initially designed to combat state-sanctioned violence, its efficacy has been eroded over time by subsequent judicial and legislative action. Unfortunately, the current state of Section 1983 falls short of this envisioned role, particularly for incarcerated individuals who find themselves navigating the complexities of the federal court system as pro se litigants.

Faced with a landscape devoid of resources, incarcerated individuals struggle to realize their constitutional rights, further perpetuating their collective status as a second-class citizenry—a status imposed by their own government. As this Article will posit, the systemic perception of incarcerated pro se litigants as a low priority within this legal framework underscores the urgent need for change. While other scholarship has advocated for legislative reform of Section 1983, this Article uniquely contends that access to resources alongside a shift in federal jurisprudence is a workable mechanism to recapture the intended purpose and capabilities of Section 1983.

Recent and rapid advancements in AI offer a cost-effective, meaningful avenue for incarcerated pro se litigants to access the federal court system and address this need for change. While other scholarship has exhaustively explored this technology's transformative potential in legal practice, this Article

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is the first to emphasize the necessity of extending it to those who require it the most—incarcerated litigants.

This Article confronts the intersection of civil rights litigation and AI, recognizing the two as unlikely yet compatible partners capable of catalyzing transformative change in Section 1983 litigation. By elucidating the dire need for reform in incarcerated pro se litigation and showcasing AI as an unconventional protagonist, this Article endeavors to redefine the narrative for individuals and shape the trajectory of pro se litigant access to AI-powered legal tools such that it can realize the full intent of Section 1983.

INTRODUCTION

Incarceration poses daunting challenges to those that face it, and when the government mistreats incarcerated individuals ("Inmates"),[1] it exacerbates the already-present hardships imposed on those in prison.[2] When a person is incarcerated, they lose core components of their self-autonomy.[3] Inmates cannot decide what and when they eat, when to sleep or wake, who they share their surroundings with, or the degree to which they have access to the internet or other devices to communicate with their loved ones.[4] Most importantly, Inmates often have little to no agency to remove themselves from unsafe environments or physical conflicts, and often cannot seek emergency medical attention without permission from prison staff.[5] Such an environment is ripe for abuse by fellow Inmates and staff alike. Accordingly, many Inmates require and seek access to resources to protect themselves from mistreatment suffered while in prison.

42 U.S.C. 1983 ("Section 1983" or the "Act") was drafted alongside the Thirteenth, Fourteenth, and Fifteenth Amendments (the "Reconstruction Amendments"), and was designed as a tool to protect individual rights against state-sanctioned constitutional harms.[6] As this Article will argue, Section 1983 and the Reconstruction Amendments were intended to work in conjunction, safeguarding American

1. This Article uses the term "Inmate" for clarity. However, the preferred terminology is "individuals who are incarcerated" or "person who is incarcerated," as these terms are more human-centered and help to combat stereotypes and stigmas that may hinder efforts to humanize and be inclusive of people who are incarcerated. *Words Matter: Using Humanizing Language*, THE FORTUNE SOC'Y, https://fortunesociety.org/wordsmatter [https://perma.cc/77FD-WGKP] (last visited Apr. 6, 2024); *see also* Erica Bryant, *Words Matter: Don't Call People Felons, Convicts, or Inmates*, VERA INST. OF JUST. (Mar. 31, 2021), https://www.vera.org/news/words-matter-dont-call-people-felons-convicts-or-inmates [https://perma.cc/RT8D-DKSK].

2. *See generally* Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, PRISON POL'Y INITIATIVE (Mar. 14, 2024), https://www.prisonpolicy.org/reports/pie2024.html [https://perma.cc/6HJQ-ZXJU].

3. *See* Katie Rose Quandt & Alexi Jones, *Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health*, PRISON POL'Y INITIATIVE (May 13, 2021), https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts [https://perma.cc/T8V4-8X6S].

4. *See id.*

5. *See id.*

6. 42 U.S.C. § 1983; *see also* Lynch v. Household Finance Corp., 405 U.S. 538, 544 (1972).

liberties in the shadow of the Civil War as sword and shield, respectively.

The Act no longer serves as the metaphorical sword envisioned, especially for Inmates confronted with a legal-resource desert devoid of access to adequate legal representation. Inmates are rarely legal experts themselves, and neither the Constitution nor federal statutes provide an affirmative right to an attorney in civil cases.[7] The question thus must be asked: In what ways can an Inmate seek a legal remedy for harm? As it turns out, not many. Thus, incarcerated pro se litigants ("1983 Litigants" or "Litigants") face formidable challenges overcoming barriers to justice, including qualified immunity and *Twombly/Iqbal* pleading standards—without legal aid.[8] Section 1983—once a sharp sword in addressing various social injustices against Inmates—has become a blunt instrument incapable of piercing both procedural and substantive obstacles.

To understand this, it is important to realize that 1983 Litigants face a daunting process to receive relief for violations of even their most basic needs. Types of Litigant claims vary, but commonly include complaints of excessive force by guards,[9] lack of medical care,[10] and unsafe prison conditions.[11] Prior to having their case heard in federal court, however, 1983 Litigants must first initiate a Bureau of Prisons ("BOP") grievance.[12] This administrative grievance process, conducted internally within prison administration, bears little fruit—BOPs often deny initial

7. *See* Sarah Hainbach, *Who Deserves a Lawyer? The Case for a Right to Counsel in Housing Proceedings*, GEO. J. POVERTY L. & POL'Y (Jan. 28, 2020), https://www.law.georgetown.edu/poverty-journal/blog/who-deserves-a-lawyer-the-case-for-a-right-to-counsel-in-housing-proceedings [https://perma.cc/LYZ3-EJ7Z].

8. *See* Joanna C. Schwartz, *Civil Rights Without Representation*, 64 WM. & MARY L. REV. 641, 694–700 (2023).

9. Whitley v. Albers, 475 U.S. 312, 314 (1986) (addressing excessive-force claims in the context of prison management, setting standards for when such force amounts to cruel and unusual punishment under the Eighth Amendment).

10. Estelle v. Gamble, 429 U.S. 97, 105–06 (1976) (establishing that deliberate indifference to serious medical needs of prisoners constitutes cruel and unusual punishment, thereby forming a basis for claims under the Eighth Amendment).

11. Wilson v. Seiter, 501 U.S. 294, 302-303 (1991) (holding that prison conditions that pose a serious risk of harm to inmates can lead to Eighth Amendment claims, emphasizing the need for prisons to ensure safe and humane conditions).

12. Ira P. Robbins, *Ghostwriting: Filling in the Gaps of Pro Se Prisoners' Access to the Courts*, 23 GEO. J. LEGAL ETHICS 271, 283 (2010).

grievances while affording little process to Litigants.[13] Against the backdrop of a BOP denial, Litigants must then summon the courage to file a federal complaint pursuant to Section 1983.[14] Here too, 1983 Litigants often arrive at a dead end—federal courts often dismiss these complaints for various reasons stemming from Litigants' lack of resources—including unclear pleadings and failures to state a claim that the Inmate suffered a harm that is both plausible and believable.[15] These are not often circumstances Litigants have any meaningful control over.

Courts frequently dismiss 1983 complaints because of a lack of evidence that in turns stems from a vacuum in prison transparency; it may be unclear who harmed an Inmate, how to assess their injuries, or how to obtain information required to show plausibility.[16] Furthermore, investigations reveal shocking instances where judges have disregarded Section 1983 claims without adequately considering their merits.[17] This form of gatekeeping essentially penalizes Litigants for their lack of personal legal knowledge or formal training, which can often manifest in handwritten pleadings like the following.[18]

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13. *Id.* at 282–83. Scholars compare the prison grievance process to the Equal Employment Opportunity Commission, noting that the former "enable[s] informal investigations (and the resolution of administrative complaints) by the entity in control of the relevant information," whereas the latter is an independent administrative agency with an investigatory process. *See* Tiffany Yang, *The Prison Pleading Trap*, 64 B.C. L. REV. 1145, 1176–78 (2023).

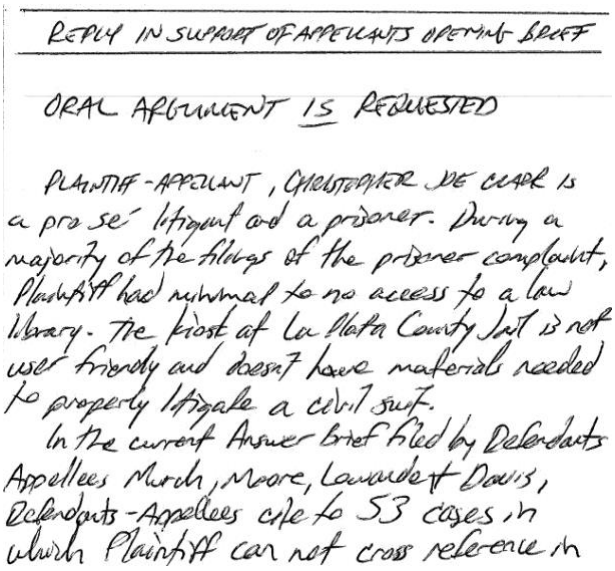
14. Robbins, *supra* note 12, at 283.

15. *See* Schwartz, *supra* note 8, at 665.

16. *Cf. id.* at 699 (2023) (acknowledging that the process of litigation under Section 1983 often does not generate clear evidence of constitutional violations due to the nature of settlement agreements and the rarity of judicial rulings on the constitutionality of officers' actions, thereby contributing to the challenges inmates face in demonstrating the plausibility of their claims).

17. *See generally* Anat Rubin, *The Scandal That Never Happened*, PROPUBLICA, (Nov. 4, 2023, 5:00 AM), https://www.propublica.org/article/louisiana-judges-ignored-prisoners-petitions-without-review-fifth-circuit [https://perma.cc/5XBM-3NAL].

18. In this note, Litigant Christopher Joe Clark contends that he had minimal to no access to a law library, the kiosk at La Plata County Jail was not user-friendly, and he lacked the necessary materials to properly litigate a civil suit. The pleading states "Plaintiff-Appellant, Christopher Joe Clark is a pro se litigant and prisoner. During the majority of the fillings of the prisoner complaint, Plaintiff had minimal to no access to a law library. The kiosk at La Plata County Jail is not user friendly and doesn't have materials needed to properly litigate a civil suit. In the current Answer Brief filed by Defendants Appellees [names] Defendants-Appellees cite to 53 cases in which Plaintiff can not [sic] cross reference in . . . ." *See* Michael Karlik, *The 20-Minute Lifeline: Colorado's Federal Court Eyes a New Program to Aid Those Behind Bars*, COLORADO POLITICS (Aug. 12, 2023), https://www.coloradopolitics.com/courts/colorado-federal-court-eyes-new-program-


REPLY IN SUPPORT OF APPELLANTS OPENING BRIEF

ORAL ARGUMENT IS REQUESTED

PLAINTIFF-APPELLANT, CHRISTOPHER DE CLARK IS a pro se litigant and a prisoner. During a majority of the filings of the prisoner complaint, Plaintiff had minimal to no access to a law library. The kiosk at La Plata County Jail is not user friendly and doesn't have materials needed to properly litigate a civil suit.

In the current Answer Brief filed by Defendants Appellees Murch, Moore, Lavender, Davis, Defendants-Appellees cite to 53 cases, in which Plaintiff can not cross reference in

This Article aims to contribute to righting these injustices. First, by illuminating the historical foundations of Section 1983, Part I.A will show its intended use as a sword for asserting individuals' rights against the government. Next, the Article compares this history with the contemporary jurisprudence of Section 1983, revealing a thicket of procedural and substantive obstacles faced by 1983 Litigants. An investigation of the state of prisons and the disproportionate effects of these standards on minority communities is set forth in Part II.A, and the varying standards applied to 1983 Litigants are discussed in Part II.B—more specifically, *Twombly/Iqbal* and the procedural and substantive defenses of qualified immunity. Considering these challenges, Part III proposes a solution: providing Inmates access to artificial intelligence ("AI"),[19] which will provide both novel equity and claim resolution in Section 1983 litigation.

to-aid-litigants-behind-bars/article_2b9909b4-2d60-11ee-aad7-c3e972974d95.html [https://perma.cc/N6W5-EWVJ].

19. In the context of this Article, "Artificial Intelligence" is defined as "the capability of computer systems or algorithms to imitate intelligent human behavior." *See Artificial Intelligence*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/artificialpercent20intelligence [https://perma.cc/GWA9-NL47] (last visited Apr. 23, 2024).

I. THE PURPOSE OF SECTION 1983: ASSERTING INDIVIDUAL RIGHTS

Section 1983, enacted during the Reconstruction Era, was drafted and passed at a time when Congress sought to reconcile the effects of a past marred with slavery while simultaneously forging a path towards reuniting the Republic. To illustrate, Part I.A discusses the origins of Section 1983, along with judicial interpretations initially consistent with Section 1983's legislative intent. Part I.B will then describe the current state of Section 1983, highlighting how it has veered from Congress' initial intent.

A. Reconstruction Origins

Section 1983 is the living ancestor of the Klu Klux Klan ("KKK") Act signed into law by President Ulysses S. Grant on April 20, 1871.[20] The KKK Act was enacted pursuant to Congress' Section 5 powers under the Fourteenth Amendment,[21] and its purpose was to protect the "enjoyment of life and liberty and with the right to acquire and possess property of every kind and pursue and obtain happiness and safety."[22] While the Reconstruction Amendments—passed to affirm constitutional protection for formerly enslaved Black Americans known as Freedmen[23]—served as the metaphorical shield to protect civil liberties, Section 1983 in turn became the sword. Both the Reconstruction Amendments and the Act were aimed at eliminating state-sanctioned violence and "Black Codes"[24]—

20. Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. §§ 1983, 1985–1986).

21. *Id.*; *see also* Lynch v. Household Finance Corp., 405 US 538, 543; U.S. CONST. amend. XIV, § 5 ("The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.").

22. *Lynch*, 405 U.S. at 545 (quoting Corfield v. Coryell, 6 F. Cas. 546, 551–52 (C.C.E.D. Pa. No. 3,230)).

23. *See* Richard Briffault, *Section 1983 and Federalism*, 90 HARV. L. REV. 1133, 1143–44 (1977).

24. Throughout the country, white individuals engaged in mass lynching, assaulting, and killing Black people without criminal consequences from the state. To exacerbate the situation, multiple states enacted legislation known as "Black Codes," which criminalized newly freed Black individuals as vagrants and loiterers. These actions collectively resulted in state-sanctioned economic control and continued oppression of Freedmen. *See Reconstruction in America: Racial Violence After the Civil War, 1865-1876*, EQUAL JUST. INITIATIVE (2020) https://eji.org/report/reconstruction-in-america [https://perma.cc/BE5A-PLX4] (last

promoted by the KKK and other White "destroyers of the Government"[25]—that essentially re-enslaved Freedmen while state agencies turned a blind eye.[26] To effect this, Section 1983 provides:

"Every person who, under color of any statue, ordinance, regulation, custom, or usage of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."[27]

The intent of the Act is supported by legislation in its periphery; during the Reconstruction Era, Congress enacted a number of other statutes and constitutional amendments protecting individual liberty[28] and committing itself to protecting the rights of individuals,[29] so that all United States Citizens could run for office, vote, and enjoy the various privileges of citizenship.[30]

Indeed, for the first time in the history of the United States, the entirety of its citizenry enjoyed legal framework upon which they could theoretically rely—a federal government obligated to ensure the protection of civil rights.[31] Rooted in federalism, Section 1983 calls on the federal government—who was understandably distrusting of the states—to protect individual rights from those states.[32]

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visited Apr. 23, 2024) (documenting 34 mass lynchings during the Reconstruction era).

25. *See* Cong. Globe, 41st Cong., 1st Sess. 439 (1871).

26. Briffault, *supra* note 23, at 1143.

27. In other words, Section 1983 provides a remedy to individuals whose federal rights have been violated by someone acting under state law. It allows individuals to sue in federal court for civil rights violations committed by state and local officials. *See* 42 U.S.C. § 1983.

28. *See* Lynch v. Household Finance Corp., 405 U.S. 538, 545–46 (1972).

29. Briffault, *supra* note 23, at 1141–43.

30. *See Historical Highlights: The Ku Klux Klan Act of 1871*, U.S. HOUSE OF REPRESENTATIVES: HISTORY, ART & ARCHIVES, https://history.house.gov/Records-and-Research/Historical-Highlights/1871-1900/Ku_Klux_Klan_Act_of_1871 [https://perma.cc/H8W3-YUME] (last visited Apr. 23, 2024).

31. Briffault, *supra* note 23, at 1135–36.

32. *Cf. id.* at 1135 (explaining that Section 1983 emerged as a response to state abuses, shifting from early American views of federalism that protected against central government tyranny to a recognition of the need for federal intervention to safeguard civil rights from state infringements).

Legislative history and related public commentary compart with the Act's legislative intent.[33] President Grant stated that, given the state of virtual anarchy in the Reconstruction-Era South, the Act's primary concern was combating the post-Civil War rise of the KKK.[34] Congress, outraged by KKK violence,[35] publicly echoed the President's claim,[36] noting the Act was necessary to protect Freedman against not only the commission of isolated violence, but also "crimes perpetuated by concert and agreement, by men in large numbers acting with a common purpose for the injury of a certain claim of citizens entertain certain political principles."[37] The issue was not confined to the South; as future President and Ohio Representative James Garfield noted, the entire Nation suffered of "a systematic maladministration . . . or a neglect or refusal to enforce [the laws], [causing] a portion of the people [to be] denied equal protection . . . ."[38]

The Act served as a warning of sorts to states, indicating federal skepticism regarding states' ability to fulfill and enforce laws and policies consistent with national initiatives.[39] By passing the Act, Congress thus demonstrated its role in addressing the Reconstruction-Era harms, leaving for the judiciary the responsibility only to interpret Section 1983.[40] As it turns out, such a task was more difficult than anticipated.

Section 1983's backslide in efficacy began when the United States Supreme Court heard *Monroe v. Pape* in 1961.[41] There, thirteen Chicago police officers broke into the plaintiff's home, destroyed his property, assaulted him, and detained him on "open" charges for ten hours without a warrant or access to a lawyer.[42] While the Court held that Section 1983 provides remedies to individuals deprived of constitutional rights by state

33. *See id.* at 1271.

34. *Id.* at 1151–53.

35. *Id.* at 1153.

36. Cong. Globe, 41st Cong., 1st Sess. 439 (1871).

37. Briffault, *supra* note 23, at 1154 (quoting Cong. Globe, 41st Cong., 1st Sess. 457 (1871)).

38. *Id.* at 1154 (quoting Cong. Globe, 41st Cong., 1st Sess. app., at 153 (1871)).

39. *Cf. id.* at 1150 (indicating that the Act was a response to federal mistrust of state courts' ability and willingness to enforce national laws and protect federally secured rights, highlighting a strategic shift to empower federal courts to intervene more assertively in civil rights enforcement).

40. *Id.* at 1148–50.

41. *Id.* at 1135–36.

42. Monroe v. Pape, 365 U.S. 167, 169 (1961), *overruled* by Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658 (1978).

and local officials, it notably excluded municipalities from liability. This meant the individual officers could be sued under Section 1983—but not the city itself.[43]

Seventeen years after *Monroe*, the Court reversed course on the applicability of Section 1983 to local governments in *Monell v. Department of Social Services* by broadening its interpretation of "person" under Section 1983 in suits filed against individuals in their official capacities.[44] The Court defined an offending "person" under Section 1983 to be inclusive of municipalities and local governments when there is a constitutional deprivation arising from the local government's or municipality's customary actions.[45] In doing so, the Court overturned *Monroe*, noting that that nothing said in legislative debates at the time the Act was drafted should have prevented the *Monroe* Court from holding a municipality liable under Section 1983.[46] In fact, the Court noted the debates stated explicitly that "citizens were owed protection" from both individual and government actors.[47]

In reversing *Monroe*, the Supreme Court briefly expanded Section 1983's utility. However, the clarity of its applicability has blurred since; despite clear congressional intent and strong precedent, issues over pleading standards have created additional barriers for 1983 Litigants.

B. Ebbed Efficacy Under Twombly/Iqbal and Immunity Defenses

In the years following its passage, notably post-*Monell*, heightened procedural requirements and immunity defenses have diluted Section 1983's strength; seminal cases *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal* ("*Twombly/Iqbal*") have since raised pleading standards—requiring that a plaintiff plead sufficient facts to establish plausible entitlement to relief.[48]

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43. *Monroe*, 365 U.S. at 187.

44. *Monell*, 436 U.S. at 685–87.

45. *Monell*, 436 U.S. at 690–91.

46. *See generally id.* The congressional debates on the Sherman amendment to Section 1983 suggested that while it would have prevented holding a municipality liable under Section 1 of the Civil Rights Act for its own violations of the Fourteenth Amendment, nothing in the debates precluded holding a municipality liable for such violations. *See Monell*, 436 U.S. at 683.

47. *Monell*, 436 U.S. at 685–87.

48. These two cases established a new standard for pleading in federal civil litigation, requiring that a complaint contain enough factual matter, taken as true, to state a claim to relief that is plausible on its face. This "plausibility standard" marked a shift from the more lenient "no set of facts" standard, heightening the

Advocates of these heightened pleading standards tout the need to balance plaintiff access to courts with protecting defendants from undue burdens.[49] However, as a result of this purported balance, the scale tips towards defendants, evidenced by increased numbers of dismissed claims following *Twombly/Iqbal*.[50] Simultaneously, substantive defenses in the forms of absolute and qualified immunity further compound the challenges 1983 Litigants face to hold government actors accountable.

Both absolute and qualified immunity make it more difficult for a Litigant to assign blame to responsible parties at the genesis of a Section 1983 claim. Absolute immunity finds its origins in common law,[51] and is no misnomer—it entitles public officials complete immunity from liability when sued in an individual capacity.[52] When determining whether to grant absolute immunity in civil matters, a reviewing court need only deem the accused's government functions sufficiently vital to warrant protection.[53] Absolute immunity serves as a good faith defense available under common law in Section 1983 civil suits.[54] Qualified immunity is a step down in protection, providing an affirmative defense for government officials who are not entitled to absolute immunity, such as police officers,

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requirements for alleging sufficient facts to survive a motion to dismiss. *See* Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007); Ashcroft v. Iqbal, 556 U.S. 662 (2009); *see also* Richard H. Frankel & Alistair E. Newbern, *Prisoners and Pleading*, 94 WASH. U. L. REV. 899, 905–06 (2017).

49. Yang, *supra* note 13, at 1158, 1188.

50. A study on motions to dismiss granted due to the specificity of the pleadings found that, prior to the *Twombly* decision, 61 percent of such motions were granted, and after *Iqbal*, the rate increased to 72 percent. Overall, since the decisions in *Twombly* and *Iqbal*, the rate of granted motions to dismiss has increased by 250 percent from the pre-*Twombly* period. *See* Ray Brescia, *Legal Scholarship Highlight: The Impact of Ashcroft v. Iqbal on Civil Rights Cases*, SCOTUSBLOG (Nov. 14, 2012, 11:56 AM), https://www.scotusblog.com/2012/11/legal-scholarship-highlight-the-impact-of-ashcroft-v-iqbal-on-civil-rights-cases [https://perma.cc/JH9X-7KB7].

51. Imbler v. Pachtman, 424 U.S. 409, 431 (1976).

52. The Supreme Court has acknowledged absolute immunity for various actors: judges performing judicial acts, legislators engaged in legislative acts, prosecutors executing prosecutorial acts, witnesses providing testimony, and the President of the United States undertaking official acts while in office. *See, e.g.*, Pierson v. Ray, 386 U.S. 547, 553–54 (1967); Bogan v. Scott-Harris, 523 U.S. 44, 49 (1998); Kalina v. Fletcher, 522 U.S. 118, 127 (1997); Rehberg v. Paulk, 566 U.S. 356 (2012); Nixon v. Fitzgerald, 457 U.S. 731, 759 (1982) (Burger, C.J., concurring).

53. *Imbler*, 424 U.S. at 430 (discussing that the focus on the functional nature of the activities over the status of the respondent highlights their integral role in the judicial process, thus justifying absolute immunity under Section 1983).

54. *Pierson*, 386 U.S. at 557.

prison guards, and other city or government employees. This directly coincides with the majority of defendants in Section 1983 litigation.[55]

For a plaintiff to overcome a qualified immunity defense they must, in their initial complaint, conjunctively show the court that; (1) the official violated a constitutional right; and (2) such right was clearly established at the time of the violation.[56] For a plaintiff to sufficiently show the court that the right is clearly established, the contours must be sufficiently clear that a reasonable government official in the defendant's position would have understood that the conduct was impermissible.[57] While one may believe a statute or a constitutional amendment meets this second prong easily, courts have held that they are general propositions of law insufficient in Section 1983 suits to show a clearly defined violation.[58] A violation must accordingly originate from precedential holdings that place the issue beyond debate,[59] and courts typically require a high degree of similarity between that precedent and the defendant's conduct.[60] As a result, qualified immunity protects government officials acting in bad faith by obscuring government customs, policies, and practices that are not easily accessible to plaintiffs—particularly at the pleading stage.

Although Section 1983's intent has historically been a guiding factor in courts' assessments of pleadings plausibility immunity claims in such matters,[61] *Twombly/Iqbal* and immunity defenses frustrate Litigant efforts to hold government

55. Teresa E. Ravenell & Armando Brigandi, *The Blurred Blue Line: Municipal Liability, Police Indemnification and Financial Accountability in Section 1983 Litigation*, 62 VILL. L. REV. 839, 840–41 (2017).

56. Pearson v. Callahan, 555 U.S. 223, 232 (2009).

57. Schwartz, *supra* note 8, at 647 (discussing the Sixth Circuit's decision in *Taylor v. Riojas* as an example of courts' inability to find "clearly established law" in inmate Section 1983 litigation); *see also* Taylor v. Riojas, 141 S. Ct. 52, 53 (2020) (per curiam).

58. Ashcroft v. al-Kidd, 563 U.S. 731, 742 (2011) ("We have repeatedly told courts . . . not to define clearly established law at a high level of generality."). The dispositive question is "whether the violative nature of particular conduct is clearly established." *Id.* Such a question "must be undertaken in light of the specific context of the case, not as a broad general proposition." Brosseau v. Haugen, 543 U.S. 194, 198 (2004) (per curiam) (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)).

59. Plumhoff v. Rickard, 572 U.S. 765, 779 (2014).

60. *See id.* at 778–79.

61. *Cf.* Imbler v. Pachtman, 424 U.S. 409, 440 (1976) (White, J., concurring) (explaining that absolute immunity for prosecutors in suits alleging false testimony is supported historically and policy-wise, to ensure freedom of speech and fearless participation in judicial processes).

actors accountable in Section 1983 litigation. Despite Section 1983's historical intent, which should guide courts' evaluation of the plausibility of pleadings and immunity claims, *Twombly/ Iqbal* standards pose obstacles and immunity defenses further hinder justice for Inmates, leaving them to navigate legal battles without adequate information.

II. PRO SE PROBLEMS: LACK OF RESOURCES, LACK OF ACCESS TO JUSTICE

Generally, 1983 Litigants understand little of case law, immunities, pleading standards, and other facets of the complex litigation they face. Section 1983 civil suits present significant challenges even for seasoned attorneys, often yielding unfavorable outcomes.[62] So of course, this difficulty is further compounded when an Inmate chooses to represent themselves pro se. Unsurprisingly, Inmates of color face heightened risks. Black, Brown, and Native American persons are more likely to be incarcerated in a system maligned by institutional racism.[63] These effects persist within prisons, leading to a greater likelihood of violations committed against minorities.[64] Marginalized groups face barriers in accessing resources and are often unable to assert their individual constitutional rights effectively. While those our society values the least—Black, Brown, and Native American people—could benefit the most, all Inmates would benefit from access to AI as Litigants in Section 1983 suits.

A. It Is 2024, and American Prisons Still Suck

Despite societal and ethical advancements, harsh prison conditions remain pervasive. Federal prisons are regularly short-staffed, which creates dangerous conditions for prison

62. *See* Karen M. Blum, *Section 1983 Litigation: The Maze, the Mud, and the Madness*, 23 WM. & MARY BILL RIGHTS J. 913, 962–63 (2015) (describing the challenges of Section 1983 litigation for plaintiffs, even among academics and lawyers).

63. *Race and Ethnicity*, PRISON POL'Y INITIATIVE, https://www.prisonpolicy.org/research/race_and_ethnicity [https://perma.cc/6JYX-GYTQ] (last visited Apr. 23, 2024).

64. *See Racial Discrimination in the United States*, HUMAN RIGHTS WATCH (Aug. 8, 2022), https://www.hrw.org/report/2022/08/08/racial-discrimination-united-states/human-rights-watch/aclu-joint-submission [https://perma.cc/F9JT-GZH7].

officials and Inmates alike;[65] this has resulted in recent spikes in violence, deaths, self-harm and suicide, exposure to extreme temperatures, and reports of failures to provide Inmates basic services.[66] Inmates in the United States Penitentiary, Administrative Maximum Facility in Florence, Colorado have been force-fed and isolated, spending days alone in a room roughly five steps long and ten steps wide.[67] Inmates often do not have access to internet search engines, phones, workshops, or any meaningful legal libraries[68]—and when they do get precious moments in the library, it's only for short periods of time and only under the watchful eye of prison staff.[69] Inmates lack sufficient access to resources and care, and in order to seek relief for situations that make their lives even worse, they must jump through hoops in a legal system they do not understand. Many are unaware of their constitutional rights to address these issues—it is through the Eighth Amendment Inmates can bring 1983 actions to address the harms stemming from harsh prison conditions.

The Eighth Amendment manifested Framers' collective intent to limit the government's power within the criminal justice system.[70] Specifically, the cruel and unusual punishment clause of the Eighth Amendment was designed to protect individuals once they had already been convicted.[71] This relates to Inmates through the prohibition of unnecessary and wanton infliction of pain.[72] The Supreme Court illustrated this relationship in *Estelle v. Gamble*, where it held deliberate

65. *See generally* Shannon Heffernan, *Federal Prisons Release Staffing*, THE MARSHALL PROJECT, (Jan. 6, 2024, 12:00 PM), https://www.themarshallproject.org/2024/01/06/federal-prisons-release-staffing [https://perma.cc/RE6A-8D9W].

66. Victoria Law, *The Worst Prison in New York State*, NY FOCUS, (Nov. 10, 2021), https://nysfocus.com/2021/11/10/great-meadow-prison [https://perma.cc/MFR2-VZ8Y].

67. Abigail Beckman, *Investigative Report Alleges 'Human Rights Abuses' at Colorado's Supermax Prison*, COLORADO PUBLIC RADIO, (June 27, 2019, 7:47 PM), https://www.cpr.org/2019/06/27/investigative-report-alleges-human-rights-abuses-at-colorados-supermax-prison [https://perma.cc/7V4L-FCE3].

68. Robbins, *supra* note 12, at 278–79.

69. *Id.* at 279.

70. *See, e.g.*, Whitley v. Albers, 475 U.S. 312, 318 (1986).

71. *Id.* at 318–20. Individuals who are not yet convicted of a crime may file a civil rights suit under the Due Process Clause as pretrial detainees. Pretrial detainees are afforded the same protections as convicted individuals under the Eighth Amendment. *See generally* Revere v. Massachusetts Gen. Hosp., 463 U.S. 239 (1983).

72. *See* U.S. CONST. amend. VIII; *Whitley*, 475 U.S. at 319–23.

indifference by a prison personnel to a prisoner's serious illness or injury equates to cruel and unusual punishment in violation of the Eighth Amendment.[73] Following *Estelle*, there are four constitutional violations within the purview of Eighth Amendment protections that 1983 Litigants may plead: medical care;[74] conditions of confinement;[75] risk of harm to other Inmates;[76] and use of force.[77] A 1983 Litigant must overcome each varied substantive standard in the pleading stage to have a successful Section 1983 suit, and each of these violations requires a showing of rather grim conditions.

Once incarcerated, individuals do not lose their right and need for safety, implicating both medical care and intra-prison violence. Illustrative in the context of medical care, prisons are staffed with medical and mental health professionals.[78] Inmates, like all other persons, routinely seek medical care for appointments, treatment for injuries, and treatment for various medical conditions. As a result, an Inmate could become a pro se litigant if they are denied medical care, which can mean insufficient pain medications and treatment or circumstances where they are denied access to medical care by prison medical staff.[79]

As to the risk of harm from other Inmates, courts have assumed that prison officials have a duty to protect prisoners from violence at the hands of other prisoners. Once in prison, individuals have been stripped of "virtually every means of self-

73. Estelle v. Gamble, 429 U.S. 97, 104–05 (1976) (explaining that deliberate indifference to serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain, prohibited by the Eighth Amendment).

74. *Id.* at 105–06.

75. Wilson v. Seiter, 501 U.S. 294, 303–04 (1991) (holding that conditions of confinement are subject to Eighth Amendment scrutiny, particularly where they may not necessarily involve physical restraint but could still amount to cruel and unusual punishments).

76. Farmer v. Brennan, 511 U.S. 825, 828–29 (1994) (holding that prison officials have a duty under the Eighth Amendment to protect inmates from harm by other inmates, recognizing that failure to fulfill this duty can constitute cruel and unusual punishment).

77. *Whitley*, 475 U.S. at 319–23 (holding that the use of force against prisoners is scrutinized under the Eighth Amendment to determine if it is part of the penalty that criminals pay for their offenses or is instead cruel and unusual punishment).

78. Taylor Elizabeth Eldridge, *Why Prisoners Get the Doctors No One Else Wants*, THE APPEAL (Nov. 8, 2019), https://theappeal.org/why-prisoners-get-the-doctors-no-one-else-wants [https://perma.cc/4H78-F9L7].

79. *See* Mata v. Saiz, 427 F.3d 745, 756–59 (10th Cir. 2005) (finding that nurse's failure to refer an inmate to a doctor after the inmate showed symptoms of cardiac emergency could be deliberate indifference).

protection" and prevented from access to outside resources.[80] Therefore, prison officials are not simply free to let the nature of violence take its course.[81] However, a reviewing court's analysis of prison officials' duties, which inform the requisite state of mind, must show a failure to attend to Inmates' medical needs alongside a subjective element of deliberate indifference.[82] Deliberate indifference means the defendant, in these types of cases often the prison official, was aware of risk and disregarded that risk.[83]

The Supreme Court defined "deliberate indifference" in *Farmer v. Brennan*,[84] where the Litigant plaintiff, a transgender woman, brought a *Bivens*[85] suit against prison officials for placing her in male general population, alleging they failed to keep her safe from being brutally beaten and raped by other Inmates.[86] The Court held that prison officials cannot be held liable under the Eighth Amendment for denying an Inmate humane conditions of confinement unless the Inmate shows those officials were aware of facts indicating risk and could reasonably determine substantial risk of serious harm.[87] In subsequent cases, the Court further clarified the meaning of serious medical needs or risk; when Litigants allege violations of their medical care rights, reviewing courts look to the extent of pain—whether it is an injury or condition a doctor would deem important, and whether the injury or condition impairs the Inmate's daily life.[88]

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80. *Farmer*, 511 U.S. at 833.

81. *Id.* at 833 (writing that the Court has consistently held that prison officials have an affirmative duty to protect inmates from violence, which is a recognized condition of confinement scrutinized under the Eighth Amendment standards of cruel and unusual punishment).

82. Estelle v. Gamble, U.S. 97, 104 (1976).

83. *See Farmer*, 511 U.S. at 848.

84. *Id.* at 829.

85. Farmer, the inmate, was diagnosed by the Bureau of Prisons as "transsexual" and presented as female. Farmer initiated a Bivens action against prison officials, alleging that their "deliberate indifference" in placing her in the general male prison population, despite presenting as female, directly resulted in her failure to be kept safe from harm subsequently inflicted by other inmates. *See id.* at 830.

86. *Id.* at 830.

87. *Id.* at 842–45.

88. *Cf,* Helling v. McKinney, 509 U.S. 25, 35 (1993) (writing that courts require inmates to prove both the severity of their health risks and the indifference of prison officials to these risks to establish a violation of the Eighth Amendment).

Inmates can also use the Eighth Amendment to file such a use of force suit pursuant to Section 1983,[89] where a reviewing court adjudicates an Inmate claim that prison officials violated their Eighth Amendment protections against cruel and unusual punishment, and in a variety of ways.[90] For instance, in *Whitley v. Albers*, in the midst of a prison riot, a prison official shot an uninvolved Inmate in the leg[91]—however, the Court held that Eighth Amendment violations for inflicting serious violence against innocent Inmates only occurs if inflicted unnecessarily and wantonly.[92]

Lastly, Inmates can file suit pursuant to Section 1983 for harsh conditions of confinement,[93] where they must show deliberate indifference of those harsh conditions by the government.[94] In *Wilson v. Seiter*, the Litigant-plaintiff alleged that his confinement was overcrowded, excessively noisy, possessed inadequate climate control, unsanitary restrooms and dining facilities, and that he was forced to house with Inmates who were mentally and physically ill.[95] Wilson advocated for a "malice" standard in showing prison officials' behavior was marked by persistent cruelty.[96] In disagreement, the Court reiterated *Whitley*, holding that when an Inmate is challenging conditions of confinement in violation of the Eighth Amendment, they must show the prison officials had a culpable state of mind.[97] In his concurrence, Justice Byron White wrote that requiring intent will often "prove impossible."[98] When

89. Whitley v. Albers, 475 U.S. 312, 314 (1986).

90. *Id.* at 327 (indicating that the Court considers the Eighth Amendment as the primary legal framework for addressing claims of excessive and unjustified use of force by prison officials, as it specifically relates to the infliction of pain in penal settings).

91. *Id.* at 317.

92. *Id.* at 327.

93. *See* Wilson v. Seiter, 501 U.S. 294, 296 (1991).

94. *Id.* at 302–03 (discussing that Section 1983 suits for harsh conditions of confinement require showing that government officials exhibited deliberate indifference to the conditions, while clarifying that fiscal constraints do not negate this requirement).

95. *Id.* at 296.

96. *Id.* at 303.

97. *Id.* at 303–05 (discussing the standard for Eighth Amendment claims regarding conditions of confinement, specifying that inmates must prove that prison officials acted with a culpable state of mind, often characterized as deliberate indifference).

98. The Court had the opportunity to redefine or further clarify the "deliberate indifference standard" applied in *Estelle*, but maintained that the same standard applies in conditions of confinement, rejecting Wilson's argument that the standard should be malice. *See id.* at 310 (White, J., concurring).

challenging a prison system's conditions, Inmates must contend with difficulties in identifying the culpable party; defenses of cumulative action and a system designed to protect itself are difficult to challenge,[99] and prison officials have an easy way out by claiming poor conditions are not intentional but an unfortunate byproduct of, say, insufficient funding.[100]

The holdings in *Farmer*, *Estelle*, and *Wilson* thus mean that a 1983 Litigant has the burden of showing high mens rea thresholds at the time of the violation. Inmates have little access to medical and incident records which are also easy for prison staff to amend or delete, which makes it difficult to show that the prison staff knew or should have known of substantial risk of serious harm.[101]

Statistics clearly show an access-to-justice issue for 1983 Litigants and Inmates more broadly,[102] whose petitions in the past two decades have been pro se 91 percent of the time.[103] Even more starkly, pro se individuals are parties in 27 percent of *all* civil filings.[104] This is especially taxing on judicial efficiency—pro se cases require additional resources,[105] for which pro se law clerk positions have been tasked to process cases and provide resources specifically for pro se litigants. However, the pro se process is still insufficient.[106]

Courts have been apprised of the barriers; in 1969, the Court in *Johnson v. Avery* noted that "[j]ails and penitentiaries include . . . a high percentage of persons who are . . . illiterate, whose educational attainments are slight, and whose intelligence is limited."[107] And more than half a century later, these issues are still potent.[108]

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99. *Id.* at 311 (White, J., concurring).

100. *Id.*

101. Preiser v. Rodriguez, 411 U.S. 475, 492 (1973) ("For state prisoners, eating, sleeping, dressing washing working, and playing are all done under the watchful eye of the State, and doing so the possibilities for litigation under the Fourteenth Amendment are boundless. What for a private citizen would be a dispute with his landlord, with his employer, with his tailor, with his neighbor, or with his banker becomes, for the prisoner, a dispute with the State.")

102. *Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019*, UNITED STATES COURTS (Feb. 11, 2021), https://www.uscourts.gov/news/2021/02/11/just-facts-trends-pro-se-civil-litigation-2000-2019 [https://perma.cc/Q87G-D8DZ].

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Johnson v. Avery, 393 U.S. 483, 487 (1969).

108. *See* Sawyer & Wagner, *supra* note 2.

B. Incarcerated Pro Se Litigants Must Overcome Varying Legal Standards with Few Avenues for Relief

The same barriers trapping Inmates in the criminal justice system are amplified in pro se Section 1983 litigation. 1983 Litigants encounter numerous procedural barriers, including evidence selection and negative effects of the Prison Litigation Reform Act ("PLRA").[109] The PLRA exacerbates the pleading standards from *Twombly/Iqbal* by *adding* additional steps for 1983 Litigants.[110]

1983 Litigants encounter evidence selection which they are unprepared to tackle, creating a procedural obstacle.[111] Inmates generally have neither physical nor financial resources to collect and store evidence, and even if they do, they are often required to obtain the consent of prison officials.[112] As a result, 1983 Litigants cannot adequately conduct depositions, interview witnesses, or review relevant documents.[113]

Even worse, the PLRA creates, at a minimum, three additional hurdles for Inmates. First, the PLRA has a "three strikes" provision providing that once an Inmate has three claims dismissed as either frivolous, malicious, or failing to state a claim, they are then permanently barred from bringing additional civil suits unless they can show they are under imminent danger of serious physical injury.[114] The "three strikes" provision is coercive in this way, disincentivizing Inmates from filing suit in protection of their constitutional fundamental rights for fear of losing the opportunity to do so in the future. This provision combines with the fact that it is highly likely 1983 Litigant claims are dismissed because they lack the skills, access to resources, or knowledge to file a pleading that will survive a motion for summary judgment. As a result, Litigants often either fail to state a claim and lose a strike, or they are too fearful to do so in the first place.

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109. *See* 28 U.S.C. § 1915.

110. Antonieta Pimienta, *Overcoming Administrative Silence in Prisoner Litigation: Grievance Specificity and the "Object Intelligibly" Standard*, 114 COLUM. L. REV. 1209, 1212–14 (2014)

111. Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1611 (2003) (discussing prisoners' inability to pay for depositions or expert witness fees).

112. *Id.*

113. *Id.*

114. 28 U.S.C. § 1915(g).

The second hurdle imposed by the PLRA requires prisoners to exhaust all available administrative remedies before filing suit,[115] which forces compliance with prison administrative policies prior to having access to court.[116] The forced compliance with procedural difficulties in prison administrative grievance policies not only chills Litigant access to justice, it puts Inmates at risk of retaliation from prison guards and officials.[117]

The third hurdle set by the PLRA "requires" federal district courts to review all inmate complaints against government officials—however, in practice, this requirement operates more like a loophole, allowing courts the option to review before docketing the case.[118] This means that prior to even hearing a claim directly, courts may dismiss a suit if it deems the complaint frivolous, malicious, or insufficient for relief—without motion, notice, or any other method of providing the Litigant an opportunity to respond.[119]

C. Lack of Constitutional Protections and Insufficient Reforms

The Sixth Amendment provides citizens the right to counsel in criminal cases, but that does not extend to civil claims, leaving Litigants with no constitutional right to an attorney.[120] This Article thus argues that Litigant access to AI would empower pro se Litigants in meeting both procedural and substantive requirements for a successful Section 1983 claim.

Access to adequate representation during Section 1983 litigation significantly influences outcomes.[121] Litigation trends reflect this even for non-prisoners: In non-prisoner pro se litigation for civil rights claims in federal courts, the plaintiff receives a judgment in only 2 percent of cases, while represented plaintiffs earn favorable judgments 43 percent of the time.[122]

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115. Robbins, *supra* note 12, at 283.

116. *Id.*

117. *Id.*

118. Schlanger, *supra* note 111, at 1629.

119. *Id.* at 1629–30 (discussing prisoners' inability to pay for depositions or expert witness fees).

120. U.S. CONST. amend. VI.

121. Mitchell Levy, *Empirical Patterns of Pro Se Litigation in Federal District Court*, 85 U. CHI. L. REV. 1819, 1840–42 (2018).

122. *Id.* at 1840 (discussing a 2 percent success rate when only the plaintiff is pro se compared with 43 percent when both plaintiff and defendant are represented parties).

And unsurprisingly, Inmates are even more likely to be pro se, and efforts to address these problems have been underwhelming

The First Step Act, federal legislation passed in 2015, was hailed as progress towards prison reform.[123] However, the Act primarily aims to limit overly severe sentencing,[124] and has done little to eradicate chronic and systematic harsh prison conditions and overcrowding.[125] While courts nationwide have implemented a number of reforms to improve Litigant access to justice, those reforms have not substantially impacted case outcomes for plaintiffs.[126] No matter how many websites, hotlines, workshops, and libraries are mandated by courts to be available for pro se litigants, these resources still fail to create accessible post-conviction resources for pro se litigants.[127] Further, our criminal justice system has a dark history of criminalizing Black, Brown, poor, uneducated, and other marginalized groups.[128] Once in the prison industrial complex, individuals often feel trapped in a never-ending cycle of second-class categorization, trauma, and demoralizing institutionalization, and the corresponding lack of resources compounds the problem.[129] It is clear the assistance of counsel is invaluable, but because Inmates in civil rights suits lack sufficient access to attorneys, another solution is required.

III. AI SOLUTIONS AND POLICY IMPLEMENTATIONS

AI has revolutionized much of the modern world—it offers immense benefits to many, including the capability to equip 1983 Litigants with tools for legal research and claim

123. Ames Grawert, *What Is the First Step Act — And What's Happening With It?*, BRENNAN CENTER FOR JUST., (June 23, 2020), https://www.brennancenter.org/our-work/research-reports/what-first-step-act-and-whats-happening-it [https://perma.cc/EP3V-RG9S].

124. *See id.*

125. *Id.*

126. *See* Levy, *supra* note 121, at 1822. Reforms include direct communication with pro se clerks, public information about pro se programs, mediation, bar-maintained pro bono panels, courts paying costs and some attorney fees, and court review to determine the need for counsel. *See id.* at 1851.

127. *See* Robbins, *supra* note 12, at 278–79.

128. Nazgol Ghandnoosh & Celeste Barry, *One in Five: Disparities in Crime and Policing*, THE SENTENCING PROJECT (Nov. 2, 2023), https://www.sentencingproject.org/reports/one-in-five-disparities-in-crime-and-policing [https://perma.cc/6SWU-YHSD].

129. *See* Lena J. J. . .ggi et al., *The Relationship Between Trauma, Arrest, and Incarceration History Among Black Americans: Findings from the National Survey of American Life*, 6 SOC. MENT. HEALTH 187, 187–206 (2016).

construction, which could in turn improve overall judicial efficiency and level inequities between a 1983 Litigant and the government. Additionally, the evolution of AI partnered with its implementation for Litigants could eventually make Section 1983 a more powerful and transformative instrument for social justice.

In the contemporary landscape, the internet serves as a crucial gateway to information, with most forms of research predominantly conducted online.[130] AI is a uniquely efficient tool providing access to the same resources, serving as the medium through which a comprehensive array of resources can be provided in digestible form. The American Bar Association has taken note of AI's potential to contribute to the public good.[131] Bloomberg Law also estimates that at least 40 percent of legal tasks can be automated by AI, leading to more productivity and cost-efficiency, and the legal field agrees—its of AI has skyrocketed within the last year.[132] To gatekeep AI tools and resources from 1983 Litigants, while legal professionals use its services, would further exacerbate incarceration harms and access to justice. Indeed, access to AI readily translates to more prepared Section 1983 litigation, offering a promising solution to the unique challenges faced by Litigants navigating the legal system without representation. AI has the potential to make legal services more affordable and accessible, provide basic legal guidance, answer common legal questions, and direct 1983 Litigants to relevant legal resources. These are just a few potential benefits of AI that could directly counter many of the

130. *See* Zaryn Dentzel, *How the Internet Has Changed Everyday Life*, OPENMIND BBVA, https://www.bbvaopenmind.com/en/articles/internet-changed-everyday-life [https://perma.cc/L5FQ-Y46W] (last visited Apr. 23, 2024).

131. The benefits of AI for 1983 Litigants include case analysis, procedural guidance, language assistance, feedback and review, cost savings, and judicial efficiency to understand court orders, procedures, the ability to write legible and clear complaints, cite proper case law, and level the inequities between a 1983 Litigant and defendants' counsel. *Cf.* Herbert B. Dixon Jr., *Artificial Intelligence: Benefits and Unknown Risks*, AMERICAN BAR ASSOCIATION (Jan. 15, 2021), https://www.americanbar.org/groups/judicial/publications/judges_journal/2021/winter/artificial-intelligence-benefits-and-unknown-risks [https://perma.cc/3ZPL-WND6]
(acknowledging the increasing integration of AI in the justice system and its potential to enhance public good, while also cautioning about the unintended consequences and the need for careful consideration of AI's applications).

132. Jason Boehmig, *AI's Rise May Motivate Law Firms to Quit Their Traditional Ways*, BLOOMBERG LAW, (Nov. 27, 2023, 2:30 AM), https://news.bloomberglaw.com/us-law-week/ais-rise-may-motivate-law-firms-to-quit-their-traditional-ways [https://perma.cc/M25Q-AKUW].

barriers 1983 Litigants face, serving as a tool to enable these Litigants the ability to fully participate and represent themselves within the legal process even when they cannot obtain legal aid.

AI thus has yet unseen potential to foster the spread of reliable information and impact the ways individuals, specifically those incarcerated, interact with the judicial system. This is already true in Australia, where AI products are being developed to provide access to justice to indigent populations.[133] This AI model seeks to interpret everyday language to identify potential legal issues, and ensuring individuals understand legal jargon and the type of legal resources necessary to resolve that legal issue.[134] China too has used AI to handle simple civil litigation claims.[135] Even the Los Angeles Superior Court has implemented AI, dubbed "Gina," to help laypeople handle traffic citations.[136] Courts are beginning to provide access to justice using AI.

While critics argue that AI's direct role in litigation undermines the credibility and precedential procedures of the American judicial system,[137] this concern is misplaced. AI will likely not fundamentally change or skew outcomes, but rather do much to ensure that more parties, including 1983 Litigants, understand the courts—and in turn, the courts understand Litigants. AI will not change the facts of each case, but it can yield well-written complaints clearly communicating those facts; in turn, this can result in more settlements and otherwise favorable outcomes for Litigants.[138] Furthermore, time spent writing motions and interpreting the law would decrease for all parties involved, contributing to a more efficient docket.[139]

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133. Chris Owen & Mary-Frances Murphy, *Virtual Justice? Exploring AI's Impact on Legal Accessibility*, NORTON ROSE FULBRIGHT (Nov. 2023), https://www.nortonrosefulbright.com/en/knowledge/publications/5d541d69/virtual-justice-exploring-ais-impact-on-legal-accessibility [https://perma.cc/MPT7-G828].

134. *See id.*

135. Justin Snyder, *RoboCourt: How Artificial Intelligence Can Help Pro Se Litigants and Create a "Fairer" Judiciary*, 10 IND. J. L. & SOC. EQUAL. 200, 213 (2022).

136. *See id.*

137. *Cf.* John Villasenor, *How AI Will Revolutionize the Practice of Law*, BROOKINGS INSTITUTION (Mar. 20, 2023), https://www.brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law [https://perma.cc/7V96-H94J] (acknowledging the transformative impact of AI on legal practices, potentially leading to concerns about its influence on traditional legal procedures and the importance of human judgment in judicial processes).

138. *See id.*

139. Snyder, *supra* note 135, at 217.

Further concerns exist that AI incorporation will inundate or flood the court system—what this Article calls floodgates logic[140]—or create unfair advantages in civil proceedings undermining the rule of law.[141] This concern is unfounded here for two main reasons. First, floodgates logic assumes that there is a certain appropriate number of cases that the court should hear. Second, those opposed to better-resourced Section 1983 litigation often claim that Litigants file complaints too often and that their filings are not good enough. This is both wrong and unethical; Section 1983 is precisely for Inmates who are challenging unconstitutional confinement, and pro se litigation is often their only mechanism to enforce those constitutional rights.[142]

Furthermore, the opposite is likely true. Long term, AI resources that in turn provide access to justice and adequate understandings of 1983 Litigants' claims will lower, not raise, the burden on court dockets.[143] AI, already used by lawyers in finding relevant documents for discovery requests, is potentially both cheaper and more accurate,[144] and can be utilized to predict legal outcomes and provide summaries of similar cases.[145] This could lead Litigants to accurately assess their chances of a favorable outcome to help decide if their case has merits—and if so, how to pursue those merits correctly.[146] And as a backstop, the PLRA is still intact and the three strikes provision prevents the same Inmate from flooding the court with repeated baseless litigation.[147]

Valid concerns about implementing AI include a well-documented bias against marginalized communities within its algorithms.[148] Existing biases may lead to inequitable case outcome predictions by perpetuating discriminatory, yet

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140. Drew A. Swank, *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 AM. U. L. REV. 1537 (2005).

141. *See id.* at 1549–52.

142. Estelle v. Gamble, 429 U.S. 97, 102–03 (1976).

143. Snyder, *supra* note 135, at 209–10, 17.

144. *See* Villasenor, *supra* note 137.

145. *See* Snyder, *supra* note 135, at 211; *see also* Villasenor, *supra* note 137.

146. *See* Snyder, *supra* note 135, at 211.

147. *See supra* Part II.B and accompanying text.

148. Nicol Turner Lee et al., *Algorithmic Bias Detection and Mitigation: Best Practices and Policies to Reduce Consumer Harms*, BROOKINGS INSTITUTION (May 22, 2019), https://www.brookings.edu/articles/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms [https://perma.cc/M2CP-TF4H].

precedential, holdings. Many have argued this is precisely why judges should not be implementing AI to lighten dockets.[149] To counteract systematic biases, it is critical to ensure access to AI does not continue perpetuating these issues; this is why for the solution this Article proposes to succeed, Litigants must have access to unbiased systems. AI developers have the capacity to install antibias coding and account for the nuisances within litigation.[150] It is imperative that they do so.

Reform almost always has monetary implications—but comparatively, AI has a cost-effective framework for implementation.[151] While there are upfront costs associated with providing Inmates access to AI—many prisons truly struggle to provide access to computers, tablets, and internet[152]—both the economic and social costs of *not* implementing reform outweigh those of implementation.[153] As an initial step, providing AI access to Litigants on shared computers in law libraries would ensure that access to AI is monitored and relatively cost-effective for prisons. LexisNexis has a contract with numerous state prisons for legal research dating back to 2004.[154] The confluence of these considerations leads to the unavoidable conclusion: AI has the potential to be groundbreaking by assisting 1983 Litigants with assistance in drafting their Section 1983 complaints. It is up to policymakers to realize that potential.[155]

CONCLUSION

Inmates for too long have been forsaken by both our society at large and the criminal justice system. While Congress intentionally provided a means for individuals, including those incarcerated, to assert their constitutional rights against

149. Snyder, *supra* note 135, at 218–19.

150. *See* Christopher Bergh, *What Is 'Equity As Code,' And How Can It Eliminate AI Bias?*, FORBES TECH. COUNCIL (June 7, 2021, 8:00 AM), https://www.forbes.com/sites/forbestechcouncil/2021/06/07/what-is-equity-as-code-and-how-can-it-eliminate-ai-bias [https://perma.cc/947P-K3DJ].

151. Snyder, *supra* note 135, at 218.

152. Ashley Krenelka Chase, *Exploiting Prisoners: Precedent, Technology, and the Promise of Access to Justice*, 12 WAKE FOREST J. L. & POL'Y 103, 142–43 (2022).

153. *Cf.* Snyder, *supra* note 135, at 218 (arguing that despite the initial high costs of introducing AI systems within prisons, the broader societal benefits and the potential for cost savings over time justify the investment).

154. *LexisNexis Sells Its Database to Prisons*, NBC NEWS (Mar. 16, 2004), https://www.nbcnews.com/id/wbna4540333 [https://perma.cc/YEK2-5E7G].

155. *See, e.g.*, Snyder, *supra* note 135.

government action through Section 1983, courts have eroded the effectiveness of the Act over time. Heightened pleading standards, immunity defenses, and the PLRA mean Litigants face even greater hurdles than typical Section 1983 Litigants. Consequently, minimal constitutional protections exist for Inmates, and Section 1983 fails to fulfill its intended purpose.

Nevertheless, there is a potential solution for Section 1983 to fulfill its original purpose and safeguard the constitutional rights of Inmates. AI offers a feasible avenue to mitigate the negative effects of the substantial barriers faced by Litigants in Section 1983 suits. By leveraging AI, 1983 Litigants would be equipped to understand their cases, write clear and plausible claims for relief, and be taken seriously by the courts. Even progress past the initial pleading stage in the litigation process would be an improvement to Inmate access to justice. Ultimately, AI- facilitated access to federal courts may compel the courts to confront the incongruencies of the current jurisprudence surrounding Section 1983. At a minimum, implementation of AI in Section 1983 suits stands to benefit dockets, judges, and most importantly, incarcerated pro se 1983 Litigants by enhancing legal acumen, understanding of case merits, and judicial efficiency.