

20-6860
No.

IN THE
SUPREME COURT OF THE UNITED STATES

Antonia W. Shields - PETITIONER

vs.

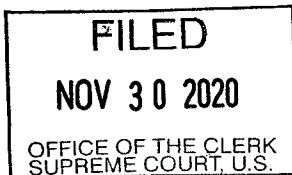
United States - RESPONDENT

ORIGINAL

On Petition for Writ of Certiorari

to the United States Court of Appeals for the Second Circuit

Petition for Writ of Certiorari



Antonia W. Shields, pro se NOVEMBER 30, 2020
Antonia W. Shields, pro se

PO Box 195

Saratoga Springs, New York 12866

(315) 368-4415

QUESTIONS PRESENTED

Respectfully, does the federal government give unequal right to a free United States citizen and give unequal right to the United States Constitution when judiciary, specifically under 28 U.S.C. §453, requires standard of review, 28 U.S.C. §1915, because of Local Rule 5.4 U.S. district court for the Northern District of New York? For civil action filed, a free U.S. citizen, determined poor, is named in standard of review, 28 U.S.C. §1915, "prisoner." Yet, for civil action filed, a free U.S. citizen, rich, does not have same standard of review and is not named "prisoner." For free U.S. citizen Shields filing civil action, does governmental use of this different standard of review, 28 U.S.C. §1915, violate security of "Blessings of Liberty" under the United States Constitution preamble, undo equal right to the poor and to the rich, and undo 28 U.S.C. §453 ?

PARTIES and Related Cases

The parties are the same as on the caption of the case.

Application to this Court for a writ of certiorari to review this case, commenced in U.S. district court, in review by the Second Circuit # 20-3427, is made at this time, please, before judgment under Rule 11.

No pending cases exist, except the Second Circuit's # 20-3427.

Shields has filed principal Brief with Appendix at the end of it.

In Second Circuit's Principal Brief of Shields is Complaint's page 3 of 5, alleging the government harmed both Shields and the U.S. Constitution in related case: Shields v. Klein, et al. No. 18-cv-835, U.S. District Court for the Northern District of New York (N.D.N.Y.).

Judgment entered on February 7, 2019.

Further, alleged harm to Shields and to the U.S. Constitution happened within this case, itself, No. 20-cv-152, U.S. District Court for the N.D.N.Y.; Judgment entered on September 11, 2020.

More, that Judgment's Report-Recommendation has a related case:(14-cv-624). Important, that September 3, 2014 Decision and Order Ordered Shields (her) choice. So, November 4. 2014 Judgment is, yet certainly not to Shields, failure to comply with Court Order .

TABLE OF CONTENTS

| | |
|--|-----------|
| OPINIONS BELOW | 1 |
| JURISDICTION | 2 |
| CONSTITUTIONAL, STATUTORY, AND RULES PROVISIONS INVOLVED..... | 4 |
| STATEMENT OF THE CASE..... | 13 |
| REASONS FOR GRANTING THE PETITION..... | 19 |
| CONCLUSION | 22 |
| PROOF OF SERVICE..... | 23 |

| | INDEX TO APPENDICES | page in Appendix |
|-------------------|--|-------------------------|
| Appendix A | 2020 Decision and Order | 1 |
| Appendix B | 2020 Judgment..... | 7 |
| Appendix C | 2020 Complaint..... | 8 |
| Appendix D | 2020 Civil Cover Sheet and its Instructions..... | 14 |
| Appendix E | 2020 Clerk's Certification <i>in forma pauperis</i> granted | 16 |
| Appendix F | page 17, U.S. district court N.D.N.Y. Pro Se | 17 |
| | Handbook (Civilian) Revision Date 3/24/2015 | |
| | - Government's Directive to Shields | |
| Appendix G | 2020 Report-Recommendation and Order..... | 18 |
| Appendix H | 2020 docket #20-cv-152xi..... | 27 |
| | xi. | |

TABLE OF CITED AUTHORITIES

| CASES | page(s) |
|--|------------------------|
| Supreme Court 11/25/2020 Docket 20A87,..... | 22 |
| Justice Breyer, writing for the Court. | |
| CONSTITUTIONAL PROVISIONS | |
| U.S. Const. pmlb..... | ix,4,17,19 |
| U.S. Const. art. III, § 2, cl. 1, cl. 2..... | 5,21 |
| U.S. Const. amend. I..... | 4,13,14,16,17,19,21,22 |
| U.S. Const. amend. V..... | 4,13,14,16,18,20,21 |
| U.S. Const. amend. X..... | 4,16 |
| U.S. Const. amend. XIV, § 1, cl. 1..... | 2,4 |
| STATUTES | |
| 28 U.S.C. § 41..... | 3 |
| 28 U.S.C. § 453..... | ix,6,16 |
| 28 U.S.C. § 1254(1)..... | 2 |
| 28 U.S.C. § 1331..... | 5,17 |
| 28 U.S.C. § 1346(a)(2)..... | 5,18 |
| 28 U.S.C. § 1402(a)(1)..... | 3 |
| 28 U.S.C. § 1657..... | 2 |
| 28 U.S.C. § 1658(a)..... | 3 |
| 28 U.S.C. § 1915 | ix,6,13 -19, 21,22 |
| 28 U.S.C. § 2071..... | 10,17 |
| 28 U.S.C. § 2072..... | 5,17 |
| 28 U.S.C. § 2101(e)..... | 2 |
| RULES | |
| SC Rule 11..... | 1,2 |
| Fed. R. Civ. P. 1..... | 10,13 |
| Fed. R. Civ. P. 4(c)(3)..... | 10,14 |
| U.S. district court N.D.N.Y. Local Rule 5.2 (a) | 10,15 |
| U.S. district court N.D.N.Y. Local Rule 5.4..... | ix,11,13,15,18,19 |
| U.S. district court N.D.N.Y. Pro Se Handbook..... | 10,14,15, 17-20 |
| [page 17 (Civilian), herein called “Directive”] | |
| OTHER. <i>Black’s Law Dictionary</i> (8th ed. 2004)..... | 22 |

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully asks that the Court consider this petition under Rule 11, with the understanding that the globe is in the midst of the 2020 pandemic.

OPINIONS BELOW

Federal courts:

The opinion of United States court of appeals for the Second Circuit has yet to issue; for the Second Circuit's #20-3427, Shields's Principal Brief and its Appendix is timely filed.

The opinion of United States district court for the Northern District of New York for case # 20-cv-152 appears at Appendix A to the petition, and

Whether or not it is reported or unpublished is not known because Shields is *pro se*.

JURISDICTION

The basis for jurisdiction in this Court is as follows:

The date the Judgment and Decision and Order sought to be reviewed is pending in the U.S. court of appeals for the Second Circuit. So, this petition is filed under this Court's Rule 11.

At this time, there is no date of order respecting rehearing.

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is:

28 U.S.C. § 2101(e):

“An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.”

And, 28 U.S.C. § 1254(1) (This is a civil action.)

And 28 U.S.C. § 1657 ‘Priority of civil actions (a) Notwithstanding any other provisions of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action...if good cause therefor is shown. For the purposes of this subsection, “good cause” is shown if a right under the Constitution of the United States or a Federal statute... would be maintained in a factual context that indicates that a request for expedited consideration has merit....’

And, under U.S. Constitution amend. XIV. § 1, cl. 1, Antonia W. Shields is a citizen of the United States.

And, 28 U.S.C. § 1658 (a) Jurisdictional Timing on commencement of civil actions “(a) Except as otherwise provided by law, a civil action arising under an Act of Congress... may not be commenced later than 4 years after the cause of action accrues.”

28 U.S.C. § 41: “The ...judicial circuit () of the United States (is) constituted as follows: Second ... New York” And, Shields has filed in the U.S. court of appeals for the Second Circuit, in charge of the U.S. district court for the N.D.N.Y. Civil Filing Division 1 - Albany with this Court over all federal courts. Saratoga County is where Shields resides. 28 U.S.C. § 1402 (a)(1).

The subject matter is federal question civil action 440-other (for non-prisoner) alleging constitutional violation (cv) on the Civil Cover Sheet filed February 12, 2020. (App. D). The U.S. district court final Decision and Order and Judgment entered September 11, 2020. (App. A) (App. B).

The U.S. court of appeals for the Second Circuit docketed the civil action for review on October 2, 2020, filing Shields’s Principal Brief with its Appendix (on November 12, 2020 according to phone call; Shields is awaits a new 2nd circuit docket sheet to be mailed.)

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

CONSTITUTION OF THE UNITED STATES

U.S. Const. pmlb.:

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

U.S. Const. amend. V.:

“No person shall be ... deprived of ... liberty ... without due process of law”

U.S. Const. amend. I. :

“Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.”

U.S. Const. amend. X. :

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved ... respectively, or to the people.”

U.S. Const. amend. XIV, § 1, cl. 1.:

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

U.S. Const. art. III, § 2, cl. 1, cl. 2.:

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, ... under their Authority ... In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make....”

STATUTES INVOLVED

28 U.S.C. § 1331:

“Federal question The district courts shall have original jurisdiction of all civil actions arising under the Constitution, Laws, or treaties of the United States.”

28 U.S.C. § 1346 (a)(2):

“United States as defendant (a) The district courts shall have original jurisdiction, concurrent... of (2) Any other civil action ... against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution...”

28 U.S.C. § 2072: “Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect....”

28 U.S.C. § 453:

‘Oaths of justices and judges Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office:

“I, _____, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God.”

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 to 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.**

28 U.S.C. § 1915.

28 U.S.C. § 2071:

“Rule-making power generally (a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title....”

RULES INVOLVED

Federal Rules of Civil Procedure: Rule 1.

“These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as state in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”

Federal Rules of Civil Procedure: Rule 4.(c)(3).

“4. Summons... (c) Service... (3) By a Marshal or Someone Specially Appointed. ... The court must so order if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915”

U.S. district court N.D.N.Y. Pro Se Handbook (Civilian)

Revision Date 3/24/2015) Directive is on its page 17:

“... You must either pay the fee in full at the time you present your complaint to the Court for filing or, if you are unable to pay the fee, you must submit an application to proceed *in forma pauperis* along with your complaint. If you file an application to proceed *in forma pauperis* instead of a filing fee, the Court will then consider your application and determine whether you are entitled to proceed *in forma pauperis*. See Local Rule 5.4.”

U.S. district court N.D.N.Y. Local Rule 5.2 (a) says, “ Filing Fees. ... Title 28 U.S.C. § 1915 and L.R. 5.4 govern *in forma pauperis* proceedings.”

U.S. district court N.D.N.Y. Local Rule 5.4 “Civil Actions Filed *In Forma Pauperis*; Applications for Leave to Proceed *In Forma Pauperis*. (the whole Local Rule)

(a) On receipt of a complaint or petition and an application to proceed *in forma pauperis*, and supporting documentation as required for prisoner litigants, the Clerk shall promptly file the complaint or petition without the payment of fees and assign the action in accordance with L.R. 40.1. The Clerk shall then forward the complaint or petition, application and supporting documentation to the assigned judicial officer for a determination of the *in forma pauperis* application and the sufficiency of the complaint or petition and, if appropriate, to direct service by the Marshal. Prior to the Marshal serving process pursuant to 28 U.S.C. § 1915 (d) and L.R. 5.1 (e), the Court shall review all actions filed pursuant to 28 U.S.C. § 1915 (g) to determine whether *sua sponte* dismissal is appropriate. The granting of an *in forma pauperis* application shall not relieve a party of the obligation to pay all other fees for which that party is responsible regarding the action, including but not limited to copying and/or witness fees.

(b) Whenever a fee is due for a civil action subject to the Prison Litigation Reform Act (“PLRA”), the prisoner must comply with the following procedure:

- 1. (A) Submit a signed, fully completed and properly certified *in forma pauperis* application; and (B) Submit the authorization for issued by the Clerk’s office.**
- 2. (A) (i) If the prisoner has not fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, a judicial officer shall, by Court order, inform the prisoner about what he or she must submit in order to proceed with such action in this District (“Order”).**

(ii) The Order shall afford the prisoner thirty(30) days in which to comply with the terms of same. If the prisoner fails to comply fully with the terms of such Order within such period of time, the Court shall dismiss the action.

(B) If the prisoner has fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, the judicial officer shall review the *in forma pauperis* application. The granting of the application shall in no way relieve the prisoner of the obligation to pay the full amount of the filing fee.

3. After being notified of the filing of the civil action, the agency having custody of the prisoner shall comply with the provisions of 28 U.S.C. § 1915 (b) regarding the filing fee due for the action.

N.D.N.Y. Local Rule 5.4

STATEMENT OF THE CASE

The Government's benefit of filing a civil action Complaint, for *pro se* Shields, poor, non-prisoner, U.S. citizen, by Directive to apply for leave to proceed *in forma pauperis* and further, by being governed by 28 U.S.C. § 1915 and U.S. district court N.D.N.Y. Civil Governmental Division Local Rule 5.4, does not administer justice. Yet, Fed. R. Civ. P. 1., its scope and purpose, secures the "just ... determination of every action and proceeding." The criterion for judicial analysis implicates a fundamental right under Amendment V. due process for liberty, freedom from arbitrary restraint by the government. This is because the government's attainment of 28 U.S.C. § 1915(g), in 28 U.S.C. § 1915 and in U.S. district court for the Northern District of New York (N.D.N.Y.) Local Rule 5.4., through Directive authorized by the government, as the clerk does not make law, allegedly violates Constitutional Amendment V. due process; the Government arbitrarily abridges Shields's First Amendment right to petition the Government for a redress of grievances because she is poor. Otherwise, Shields's First Amendment fundamental right of petition would be maintained. page 13

And, 28 U.S.C. § 1915(g) is not a legitimate governmental objective under Amendment V. to the U.S. Constitution because 28 U.S.C. § 1915(g) reduces the First Amendment fundamental right of U.S. citizen Shields to petition for a redress of grievances for each instance a non-prisoner.

It is true that *pro se* Shields, who has always been a non-prisoner, has received, from the government, instances of 28 U.S.C. § 1915(g) abridging Shields's right to U.S. Constitution Amendment V. security of Amendment I. guarantee of petition. Each time the Government's Directive required Shields to either pay the filing fee for civil action Complaint or file for leave to proceed *in forma pauperis*. (App. F) In each occurrence, Shields is poor, unable to pay, without choice of how to file civil action Complaint unless filing for and being granted for leave to proceed *in forma pauperis*. Shields noted the February 7, 2019 final Decision and Order in the 2020* Complaint (App. C)

[*To Shields's knowledge, the Government never court-ordered Fed. R. Civ. P. 4.(c)(3) Summons for this case # 20-cv-152 to be served; Shields was court-authorized to proceed *in forma pauperis*.]

In that case, the Government's Directive issued on 7/16/2018. The Government filed Shields's application for leave to proceed *in forma pauperis*, because she was poor, unable to pay to file the civil action, filing the Complaint until determination of the application for leave to proceed *in forma pauperis*, following the Government's Directive.

(App. F) The Government granted Shields leave to proceed *in forma pauperis* on 9/14/2018; Shields's allegations of poverty were found true. Then, L.R. 5.2 of Local Rules of Practice effective January 1, 2018 said, "Title 28 U.S.C. § 1915 and L.R. 5.4 govern *in forma pauperis* proceedings."

And, Title 28 U.S.C. § 1915 (g) said, "In no event shall 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."

The Government, in that February 7, 2019 Decision and Order, its page 5, cited precedent as reason to place Shields into 28 U.S.C. § 1915, even though Shields has always been a non-prisoner, because many circuits had done this to others, too, showing examples.

Shields asserts that in citing precedent, the court must administer justice, not in constitutional violation of Amendment V. due process toward Shields's fundamental Amendment I. right to petition - [Government-abridged by 28 U.S.C. § 1915 (g) for U.S. citizen, poor, non-prisoner].

There is no reason that since Shields is not a prisoner, but is court-called a prisoner, due to cited precedent, the court would not call Shields to 28 U.S.C. § 1915 (g) when Shields is *not* incarcerated or detained in any facility, because of similarly-situated court precedent.

But, to diminish the strength of Shields's fundamental right to U.S. Constitution Amendment I guarantee to petition is not to uphold justice. Shields, one of the people of the United States, under Amendment X. to the U.S. Constitution, asks for civil action in 2020.

The justice department's load upon truth in judicial Oath 28 U.S.C. § 453 affirms to "administer justice without respect to persons, and do equal right to the poor and to the rich, and ... faithfully and impartially discharge and perform all the duties incumbent ... under the Constitution and laws of the United States. So help me God."

Look above. The non-prisoner poor get less of the Oath than the page 16

non-prisoner rich in this original case, #20-cv-152. The core of inequality is here. (Originating under 28 U.S.C. § 1331.)

The First Amendment's guarantee to the right to file civil action to petition the Government for a redress of grievances certainly must not give the Government sovereign immunity from that guarantee.

And, 28 U.S.C. § 2072 secures its rules shall not abridge any substantive right of Shields, too. Shields respectfully requested 28 U.S.C. § 2072 redress in the current Complaint filed February 12, 2020. (28 U.S.C. § 2072 oversees 28 U.S.C. § 2071.) This is in addition to other redress in the Complaint. (App. C)

This is not a frivolous civil action or appeal because encroaching on free U.S citizen Shields's freedom from governmental arbitrary restraint, Liberty, is substantive under the U.S. Constitution; Liberty is secured in the U.S. Constitution's preamble. Further, this civil action or appeal is not a malicious for Shields asserts the good in the protection of justice in our U.S. Constitution.

Note, 28 U.S.C. § 1915 (g) tends more toward abridging Shields's right to U.S. Constitution Amendment I. guarantee of petition than not. And, the Government's Directive toward 28 U.S.C. § 1915 (g) for

non-prisoner Shields, poor, is wrongful, implicating fundamental right of Amendment I. petition under Amendment V. due process.

Of importance, Shields's civil action or appeal does not fail to state a claim on which relief may be granted as 28 U.S.C. § 1346 (a)(2) provides, under concurrent jurisdiction, with Shields choosing the U.S. district court. 28 U.S.C. § 2072 is requested in the Complaint. (App C).

The alleged constitutional violation happened again inside this civil action. Recently in #20-cv-152, the Government issued Directive (App. F) on 02/13/2020. Shields's Complaint entered that day, filed until the federal question civil action application for leave to proceed *in forma pauperis* could be court-determined true. On Sept. 11, 2020, the Government Ordered Decision and Judgment. (App. A) (App. B) The Decision Ordered that the Report-Recommendation be adopted in its entirety [including its granting Shields leave to proceed *in forma pauperis* under 28 U.S.C. §1915(g)]. (App. G) Through Local Rules of Practice effective January 2020, Local Rule 5.2 says 28 U.S.C. §1915 and N.D.N.Y. Local Rule 5.4 govern. (App. H) Shields respectfully requests the Court review this, too, please.

REASONS FOR GRANTING THE PETITION

Since it is judicial oath to do equal right to the poor and to the rich and to abide by the U.S. Constitution and laws of the United States, it makes sense there is a need for the court to hear the merits of this case. This civil action addresses needed clarification of the law when Directive from the Government sends petitioner Shields, because of poverty, to an unequal path and result for filing civil action complaint compared with a similarly situated (non-prisoner U.S.citizen) person who is rich.

The inequality is not in paying or not paying, as every U.S. citizen rich or poor, within the law, should have an equal right to file a civil action. But, the inequality is because the Government's Directive diminishes Shields's right to file civil action to petition the Government for redress *under* 28 U.S.C. § 1915 (g) by sending Shields to governing 28 U.S.C. § 1915 and N.D.N.Y. Local Rule 5.4.; Shields's right to Amendment I. petition becomes less with each instance - abridged because Shields is poor, unable to pay the fee to file civil action Complaint. Such is in violation of U.S. Constitution "security for the Blessings of Liberty," security from arbitrary restraint through

page 19

Amendment V. due process.

The Government's Directive is the adoption of an erroneous rule of law. (App. F). This is an *important* adoption of an erroneous rule of law because when petitioner Shields follows it, it causes Shields's substantive and fundamental right to file civil action complaint to petition the government for a redress of grievances to be abridged in alleged violation under the U.S. Constitution and Laws of the United States. This is wrongful harm to Shields and the United States Constitution, itself. It escalates with every instance.

Other district courts have adopted inconsistent rules compared to the adopted Government Directive in this case. For example, the U.S. district court for the Southern District of Iowa has an application to proceed without payment of filing fee under *pro se* forms. The U.S. district court of Utah allows for application to waive the filing fee in their *pro se* litigant guide on page 14. The U.S. district court for the Northern District of West Virginia has guide for filing federal civil suits, p.2. under Filing Fee, application to proceed without payment of fees and affidavit. And, the U.S. district court Northern District of Mississippi uses form AO240. None appear to send a non-prisoner,

page 20

poor, U.S. citizen, unable to pay the filing fee to the Government (alleged to abridge U.S. Const. amend. I. right to petition through arbitrary restraint, U.S. Const. Amend. V. due process. 28 U.S.C. § 1915 (g) is the right to petition limitation).

Yet, for clarification, new precedent is needed so that Amendment V. due process is for both the rich and the poor in cases like this one for Shields across the United States.

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, ... under their Authority ... In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make....” U.S. Const. art. III, § 2, cl. 1, cl. 2.

In this momentous era in United States history, the people seek truth. 28 U.S.C. § 1915 has simply never been true for Shields. The Government’s relies on wrong precedent to support judgment, when it so harms petitioner Shields. There are many poor people in the United States with the numbers of poor increasing in this year of the 2020 pandemic.

Shields, one of the people of the United States, understands that last week, the Court looked to U.S. Constitution Amendment I., but to a different provision than its guarantee to the right to petition. In Supreme Court 11/25/2020 Docket 20A87, it appears that Justice Breyer, writing for the Court, cited “The loss of First Amendment Freedoms for even minimal periods of time, unquestionably constitutes irreparable injury.” Elrod v. Burns, 427 U.S. 347, 373 (1976) (plurality opinion).’ Shields asserts that the word, loss, in “loss of First Amendment Freedoms” includes the First Amendment word “abridge,” that on page 6 of Black’s Legal Dictionary (8th ed.) is defined, “1. to reduce or diminish.”

The people of United States are demanding the public importance of truth and that justice be apparent.

Shields is *pro se*. Thank you for your consideration at this time.

CONCLUSION

Respectfully, this petition for writ of certiorari before Second Circuit Mandate is requested to be granted, please as 1915(g) may

happen once more.

Antonia W. Shields, pro se
Antonia W. Shields, *pro se*

Respectfully submitted,

Date NOVEMBER 30, 2020
page 22