

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 10th day of December, two thousand twenty.

ORDER

Antonia W. Shields,

Docket No. 20-3427

Plaintiff - Appellant,

v.

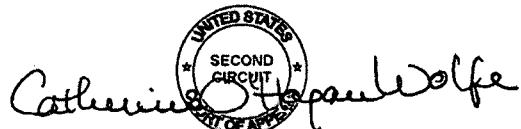
United States,

Defendant - Appellee.

This appeal has been taken from an order that dismissed the complaint. The grounds of dismissal make this appeal eligible for assignment to the Court's Expedited Appeals Calendar under Local Rule 31.2(b), and the appeal is hereby placed on that calendar.

Appellant's principal brief has already been filed. Appellee's brief is due no later than January 14, 2021, 35 days from the date of this order. Appellant's reply brief is due no later than 14 days after Appellee's brief is filed. Absent extraordinary circumstances, the Court will not grant a motion to extend the time to file a brief. *See* Local Rule 27.1(f)(1).

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court


Catherine O'Hagan Wolfe



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTONIA W. SHIELDS,

Plaintiff,

v.

1:20-CV-0152
(GTS/CFH)

UNITED STATES,

Defendant.

APPEARANCES:

ANTONIA W. SHIELDS

Plaintiff, *Pro Se*
P.O. Box 195
Saratoga Springs, New York 12866

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Antonia W. Shields ("Plaintiff") against the United States ("Defendant"), are United States Magistrate Judge Christian F. Hummel's Report-Recommendation recommending that Plaintiff's Complaint be dismissed with prejudice and without prior leave to amend pursuant to 28 U.S.C. § 1915, and Plaintiff's Objection to the Report-Recommendation. (Dkt. Nos. 5, 6.) For the reasons set forth below, the Report-Recommendation is accepted and adopted in its entirety.

I. RELEVANT BACKGROUND

A. Magistrate Judge Hummel's Report-Recommendation

APPENDIX TO PETITION

p. 1
(APP. A)

Generally, in his Report-Recommendation, Magistrate Judge Hummel rendered the following three findings of fact and conclusions of law: (1) Plaintiff's claims against the United States should be dismissed because they are barred by the doctrine of sovereign immunity, depriving the Court of subject-matter jurisdiction over them; (2) even if the Court were to review the merits of Plaintiff's claims, the Court would find that those claims are without merit, because 28 U.S.C. § 1915 and N.D.N.Y. Local Rule 5.4 (a) apply equally to both inmates and non-inmates, and (b) ensure that indigent persons have access to the courts (without subjecting their pleadings to a standard of review that is different from the standard governing pleadings by claimants who have paid the statutory filing fee); and (3) because the defects in Plaintiff's claims are substantive and not merely formal, they should be dismissed in their entirety with prejudice and without a prior opportunity to amend. (Dkt. No. 5, at Part II.C.)

B. Plaintiff's Objection to the Report-Recommendation

Generally, in her Objections, Plaintiff asserts the following two challenges to the Report-Recommendation: (1) Plaintiff did not consent to review of her claims by a U.S. Magistrate Judge; and (2) because Plaintiff is a free citizen and not a prisoner, the standard of review under 28 U.S.C. § 1915 conflicts with 28 U.S.C. § 453 which provides for "equal justice to all citizens, rich or poor" (and therefore, judgment cannot be entered against her as a plaintiff proceeding *in forma pauperis*). (Dkt. No. 6.)

II. STANDARD OF REVIEW

When a *specific* objection is made to a portion of a magistrate judge's report-recommendation, the Court subjects that portion of the report-recommendation to *de novo*

review. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)©). To be “specific,” the objection must, with particularity, “identify [1] the portions of the proposed findings, recommendations, or report to which it has an objection and [2] the basis for the objection.” N.D.N.Y. L.R. 72.1©).¹ When performing such a *de novo* review, “[t]he judge may . . . receive further evidence. . . .” 28 U.S.C. § 636(b)(1). However, a district court will ordinarily refuse to consider evidentiary material that could have been, but was not, presented to the magistrate judge in the first instance.² Similarly, a district court will ordinarily refuse to consider argument that could have been, but was not, presented to the magistrate judge in the first instance. *See Zhao v. State Univ. of N.Y.*, 04-CV-0210, 2011 WL 3610717, at *1 (E.D.N.Y. Aug. 15, 2011) (“[I]t is established law that a district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were

¹ *See also Mario v. P&C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Although Mario filed objections to the magistrate’s report and recommendation, the statement with respect to his Title VII claim was not specific enough to preserve this claim for review. The only reference made to the Title VII claim was one sentence on the last page of his objections, where he stated that it was error to deny his motion on the Title VII claim ‘[f]or the reasons set forth in Plaintiff’s Memorandum of Law in Support of Motion for Partial Summary Judgment.’ This bare statement, devoid of any reference to specific findings or recommendations to which he objected and why, and unsupported by legal authority, was not sufficient to preserve the Title VII claim.”).

² *See Paddington Partners v. Bouchard*, 34 F.3d 1132, 1137-38 (2d Cir. 1994) (“In objecting to a magistrate’s report before the district court, a party has no right to present further testimony when it offers no justification for not offering the testimony at the hearing before the magistrate.”) [internal quotation marks and citations omitted]; *Pan Am. World Airways, Inc. v. Int’l Bhd. of Teamsters*, 894 F.2d 36, 40, n.3 (2d Cir. 1990) (finding that district court did not abuse its discretion in denying plaintiff’s request to present additional testimony where plaintiff “offered no justification for not offering the testimony at the hearing before the magistrate”); *cf. U. S. v. Raddatz*, 447 U.S. 667, 676, n.3 (1980) (“We conclude that to construe § 636(b)(1) to require the district court to conduct a second hearing whenever either party objected to the magistrate’s credibility findings would largely frustrate the plain objective of Congress to alleviate the increasing congestion of litigation in the district courts.”); Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition (“The term ‘de novo’ does not indicate that a secondary evidentiary hearing is required.”).

3
APPENDIX TO PETITION
p.3.

not.”) (internal quotation marks and citation omitted); *Hubbard v. Kelley*, 752 F. Supp.2d 311, 312-13 (W.D.N.Y. 2009) (“In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge's report and recommendation that could have been raised before the magistrate but were not.”) (internal quotation marks omitted).

When only a *general* objection is made to a portion of a magistrate judge's report-recommendation, the Court subjects that portion of the report-recommendation to only a *clear error* review. Fed. R. Civ. P. 72(b)(2),(3); Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition; *see also Brown v. Peters*, 95-CV-1641, 1997 WL 599355, at *2-3 (N.D.N.Y. Sept. 22, 1997) (Pooler, J.) [collecting cases], *aff'd without opinion*, 175 F.3d 1007 (2d Cir. 1999). Similarly, when an objection merely reiterates the *same arguments* made by the objecting party in its original papers submitted to the magistrate judge, the Court subjects that portion of the report-recommendation challenged by those arguments to only a *clear error* review.³ Finally, when *no* objection is made to a portion of a report-recommendation, the Court subjects that portion of the report-recommendation to only a *clear error* review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a “clear error” review, “the court need only satisfy itself that there is no clear error on the face of the record in

³ See *Mario*, 313 F.3d at 766 (“Merely referring the court to previously filed papers or arguments does not constitute an adequate objection under either Fed. R. Civ. P. 72(b) or Local Civil Rule 72.3(a)(3).”); *Camardo v. Gen. Motors Hourly-Rate Emp. Pension Plan*, 806 F. Supp. 380, 382 (W.D.N.Y. 1992) (explaining that court need not consider objections that merely constitute a “rehashing” of the same arguments and positions taken in original papers submitted to the magistrate judge); *accord, Praileau v. Cnty. of Schenectady*, 09-CV-0924, 2010 WL 3761902, at *1, n.1 (N.D.N.Y. Sept. 20, 2010) (McAvoy, J.); *Hickman ex rel. M.A.H. v. Astrue*, 07-CV-1077, 2010 WL 2985968, at *3 & n.3 (N.D.N.Y. July 27, 2010) (Mordue, G.J.); *Almonte v. N.Y.S. Div. of Parole*, 04-CV-0484, 2006 WL 149049, at *4 (N.D.N.Y. Jan. 18, 2006) (Sharpe, J.).

order to accept the recommendation.” *Id.*⁴

After conducting the appropriate review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C)).

III. ANALYSIS

For the sake of brevity, the Court will assume that the second challenge asserted in Plaintiff’s Objections is not merely a repetition of a claim asserted in her Complaint (which has already been considered and rejected by Magistrate Judge Hummel). (*Compare* Dkt. No. 6 with Dkt. No. 1.) Even assuming that fact, after carefully reviewing the relevant papers herein, including Magistrate Judge Hummel’s thorough Report-Recommendation, the Court can find no error whatsoever in those portions of the Report-Recommendation to which Plaintiff has specifically objected, and no clear-error in those portions of the Report-Recommendation to which Plaintiff has not specifically objected: Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein, and Plaintiff’s Complaint is dismissed with prejudice and without prior leave to amend for the reasons set forth in the Report-Recommendation. To those reasons, the Court would add only that, in this District, Magistrate Judges are permitted to issue Report-Recommendations regarding the pleading sufficiency of claims by litigants proceeding *pro se* (and litigants proceeding *in forma pauperis*) pursuant to, among other things, 28 U.S.C. 636(b)(1)(B), which

⁴ See also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks and citations omitted).

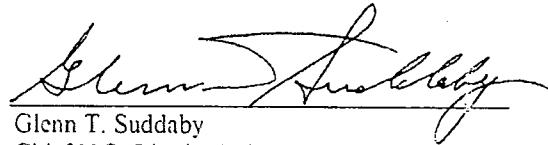
does not require the consent of the parties.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 5) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED** with prejudice and without prior leave to amend pursuant to 28 U.S.C. § 1915(e)(2)(B).

Dated: September 11, 2020
Syracuse, New York


Glenn T. Suddaby
Chief U.S. District Judge

***IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK***

JUDGMENT IN A CIVIL CASE

ANTONIA W. SHIELDS

v.

1:20-CV-152 (GTS/CFH)

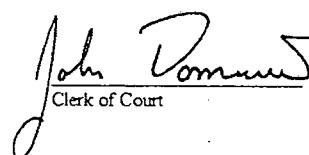
UNITED STATES

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that, pursuant to the Decision and Order issued on September 11, 2020 (Dkt. No. 10) by the Honorable Glenn T. Suddaby, that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 5) is ACCEPTED and ADOPTED in its entirety. Plaintiff's Complaint (Dkt. No. 1) is DISMISSED with prejudice and without prior leave to amend pursuant to 28 U.S.C. § 1915(e)(2)(B). The Clerk is directed to CLOSE this action.

All of the above pursuant to the Decision and Order issued by the Honorable Glenn T. Suddaby, dated September 11, 2020. Dkt. No. 10.

DATED: September 11, 2020


John R. Dominick
Clerk of Court



s/ Shelly Muller

Shelly Muller
Courtroom Deputy Clerk

APPENDIX TO PETITION p. 7.
(App. B)

Civil Case Number: _____

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

CIVIL FILING DIVISION - ALBANY

Antonia W. Shields - PLAINTIFF

v.

United States - DEFENDANT

ON MOTION TO FILE COMPLAINT FOR CIVIL ACTION

THIS IS: THE COMPLAINT FOR CIVIL ACTION

Antonia W. Shields, *pro se*

PO Box 195

Saratoga Springs, NY 12866

315.368.4415

February 10, 2020

Rachel A. Petryna
Notary

Rachel A. Petryna
Notary Public State of New York
No. 01PE6107354
Qualified In Saratoga County
Commission Expires March 29, 2020

cover
APPENDIX TO PETITION p.8.
(APP. C)

QUESTION 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 ?

JURISDICTION

Federal Rule of Civil Procedure 1 governs this civil action in the United States district court of the Northern District of New York Civil Filing Division - Albany. As such, there is security of the just, speedy, and inexpensive determination of this action. This one form of action, this civil action, is commenced by filing this complaint with the court.

1. Jurisdictional subject matter is 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.”

This civil action is a federal question civil action.

2. Jurisdictional venue general geography is 28 U.S.C. §1391(a)(2):

“a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred...”

The judicial district is the Northern District of New York

Civil Filing Division - Albany.

3. Jurisdictional venue residential geography is 28 U.S.C. §1391(c):

“...a natural person ... shall be deemed to reside in the district in which that person is domiciled.”

page 2 of 5

APPENDIX TO PETITION

p. 10.

**Shields is a U.S. citizen who is domiciled in Saratoga
County within the Northern District of New York Civil
Filing Division - Albany.**

**4. Jurisdictional timing (28 U.S.C. §2401) is just after one year
from February 7, 2019 final Decision and Order and final
Civil Judgment. There are no pending cases. The prior case
was Shields v. Klein et al. finally decided February 7, 2019.
Today is February 10, 2020. Different are the parties and
the U.S. district court complaint's federal question.**

**5. Constitutional Rights Complaint pursuant to 28 U.S.C.
§1331vc, violation of the Constitution of the United States
as hereinafter more fully appears.**

FACTS

**Local rule 5.4 of the Northern District of New York needs change
to become not in violation of the Constitution of the United
States. Harm was allegedly caused both to the Constitution of the
United States and to Shields, because the government arbitrarily made
happen on February 7, 2019, at U.S. district court Northern District of**

New York Civil Filing Division - Albany, final Decision and Order and final Civil Judgment giving Shields no equal right in violation of the Equal Right clause of United States law 28 U.S.C. §453, that binds Oath to the U.S. Constitution preamble when pursuing justice [following Local Rule 5.4 (Northern District of New York)]. Such pursuit of justice harmed Shields and harmed the U.S. Constitution by arbitrarily requiring standard of review 28 U.S.C. §1915 for free citizen Shields determined poor, unlike requiring standard of review separate from 28 U.S.C. §1915 for if Shields were rich. And, the government's pursuit of justice removed Shields's free U.S. citizen's equal right by law 28 U.S.C. §453 - denying to secure full U.S. Constitutional "Blessings of Liberty" protection - by imposing governmental arbitrary restraint in violation of the U.S. Constitution preamble; there was no equal right to the poor and to the rich for standard of review 28 U.S.C. §1915 use for Shields, who is no "prisoner," who has never been "prisoner."

Shields has always been a free U.S. citizen.

RELIEF

1. Shields requests a good change in L.R. 5.4, corrected by 28 U.S.C. 2072 to not violate the U.S. Constitution's preamble, so to "secure the Blessings of Liberty."

2. Shields also respectfully requests \$10,000 for harm done.

Truth is on the scaffold. Now, set in the beautiful stairwell railing of the building housing the U.S. district court, Northern District of New York, Civil Division - Albany at 445 Broadway, Albany, NY, the judicial scales are in balance. Request is trial by court.

But, the claim for which relief may be granted may need to be separated from governmental immunity, if conflict exists between the U.S. Constitution and other federal law affecting a judicial swath, change must happen because impartial justice must protect what is good. Equal right is impartial justice, not governmental arbitrary restraint. 28 U.S.C. §2072 may direct proper cause. Thank you.

With respect to the United States,

Antonia W. Shields 02/10/2020
Antonia W. Shields, *pro se*, PO Box 195,

Saratoga Springs, NY 12866 315. 368.4415

page 5 of 5

APPENDIX TO PETITION
p.13.

Rachel A. Petryna
Notary Public State of New York
No. 01PE6107354
Qualified In Saratoga County
Commission Expires March 29, 2020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.*

I. (a) PLAINTIFFS <u>SHIELDS, ANTONIA W.</u>		DEFENDANTS <u>UNITED STATES</u>																																																								
(b) County of Residence of First Listed Plaintiff <u>SARATOGA COUNTY</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i> <u>(N.Y.)</u>		County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i>																																																								
(c) Attorneys (Firm Name, Address, and Telephone Number) <u>pro se</u> <u>PO BOX 195</u> <u>SARATOGA SPRINGS, NY 12866</u> <u>315.368.4415</u>		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED																																																								
II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i>		III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>																																																								
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 2 U.S. Government Defendant FEDERAL QUESTION		<input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i> US GOVERNMENT TO RESOLVE <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>																																																								
		<table border="0"> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																																					
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																																																					
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																																																					
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																																																					
IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>		CONTRACT TORTS FORFEITURE/PENALTY BANKRUPTCY OTHER STATUTES																																																								
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<table border="0"> <tr> <td>PERSONAL INJURY</td> <td>PERSONAL INJURY</td> <td>625 Drug Related Seizure of Property 21 USC 881</td> <td>422 Appeal 28 USC 158</td> <td>375 False Claims Act</td> </tr> <tr> <td><input type="checkbox"/> 310 Airplane</td> <td><input type="checkbox"/> 365 Personal Injury - Product Liability</td> <td><input type="checkbox"/> 690 Other</td> <td><input type="checkbox"/> 423 Withdrawal 28 USC 157</td> <td><input type="checkbox"/> 400 State Reapportionment</td> </tr> <tr> <td><input type="checkbox"/> 315 Airplane Product Liability</td> <td><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</td> <td></td> <td></td> <td><input type="checkbox"/> 410 Antitrust</td> </tr> <tr> <td><input type="checkbox"/> 320 Assault, Libel & Slander</td> <td><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</td> <td></td> <td></td> <td><input type="checkbox"/> 430 Banks and Banking</td> </tr> <tr> <td><input type="checkbox"/> 330 Federal Employers' Liability</td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> 450 Commerce</td> </tr> <tr> <td><input type="checkbox"/> 340 Marine</td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> 460 Deportation</td> </tr> <tr> <td><input type="checkbox"/> 345 Marine Product Liability</td> <td></td> <td></td> <td></td> <td><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</td> </tr> <tr> <td><input type="checkbox"/> 350 Motor Vehicle</td> <td><input type="checkbox"/> 370 Other Fraud</td> <td></td> <td></td> <td><input type="checkbox"/> 480 Consumer Credit</td> </tr> <tr> <td><input type="checkbox"/> 355 Motor Vehicle Product Liability</td> <td><input type="checkbox"/> 371 Truth in Lending</td> <td></td> <td></td> <td><input type="checkbox"/> 490 Cable/Sat TV</td> </tr> <tr> <td><input type="checkbox"/> 360 Other Personal Injury</td> <td><input type="checkbox"/> 380 Other Personal Property Damage</td> <td></td> <td></td> <td><input type="checkbox"/> 850 Securities/Commodities/Exchange</td> </tr> <tr> <td><input type="checkbox"/> 362 Personal injury - Medical Malpractice</td> <td><input type="checkbox"/> 385 Property Damage Product Liability</td> <td></td> <td></td> <td><input type="checkbox"/> 890 Other Statutory Actions</td> </tr> </table>		PERSONAL INJURY	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC 881	422 Appeal 28 USC 158	375 False Claims Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability			<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability			<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 330 Federal Employers' Liability				<input type="checkbox"/> 450 Commerce	<input type="checkbox"/> 340 Marine				<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 345 Marine Product Liability				<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud			<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 371 Truth in Lending			<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage			<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 362 Personal injury - Medical Malpractice	<input type="checkbox"/> 385 Property Damage Product Liability			<input type="checkbox"/> 890 Other Statutory Actions
PERSONAL INJURY	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC 881	422 Appeal 28 USC 158	375 False Claims Act																																																						
<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment																																																						
<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability			<input type="checkbox"/> 410 Antitrust																																																						
<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability			<input type="checkbox"/> 430 Banks and Banking																																																						
<input type="checkbox"/> 330 Federal Employers' Liability				<input type="checkbox"/> 450 Commerce																																																						
<input type="checkbox"/> 340 Marine				<input type="checkbox"/> 460 Deportation																																																						
<input type="checkbox"/> 345 Marine Product Liability				<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations																																																						
<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud			<input type="checkbox"/> 480 Consumer Credit																																																						
<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 371 Truth in Lending			<input type="checkbox"/> 490 Cable/Sat TV																																																						
<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage			<input type="checkbox"/> 850 Securities/Commodities/Exchange																																																						
<input type="checkbox"/> 362 Personal injury - Medical Malpractice	<input type="checkbox"/> 385 Property Damage Product Liability			<input type="checkbox"/> 890 Other Statutory Actions																																																						
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Torts Product Liability <input type="checkbox"/> 290 All Other Real Property		<table border="0"> <tr> <td>REAL PROPERTY</td> <td>CIVIL RIGHTS</td> <td>PRISONER PETITIONS</td> <td>IMMIGRATION</td> <td>FEDERAL TAX SUITS</td> </tr> <tr> <td><input type="checkbox"/> 440 Other Civil Rights</td> <td><input checked="" type="checkbox"/> 440 Other Civil Rights</td> <td>Baebus Corpus: <input type="checkbox"/> 441 Vetting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education</td> <td><input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</td> <td><input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions</td> </tr> <tr> <td></td> <td></td> <td>510 Motions to Vacate Sentence <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</td> <td>710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation</td> <td><input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))</td> </tr> <tr> <td></td> <td></td> <td></td> <td>791 Employee Retirement Income Security Act</td> <td><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</td> </tr> </table>		REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	FEDERAL TAX SUITS	<input type="checkbox"/> 440 Other Civil Rights	<input checked="" type="checkbox"/> 440 Other Civil Rights	Baebus Corpus: <input type="checkbox"/> 441 Vetting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions			510 Motions to Vacate Sentence <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))				791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609																																			
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	FEDERAL TAX SUITS																																																						
<input type="checkbox"/> 440 Other Civil Rights	<input checked="" type="checkbox"/> 440 Other Civil Rights	Baebus Corpus: <input type="checkbox"/> 441 Vetting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions																																																						
		510 Motions to Vacate Sentence <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))																																																						
			791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609																																																						
<input checked="" type="checkbox"/> 1 Original Proceeding NEW ACTION		<input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify): _____		<input type="checkbox"/> 6 Multidistrict Litigation																																																						
VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity)</i> FEDERAL QUESTION CIVIL ACTION CLAIM CONFLICT CIVIL RIGHTS CONSTITUTIONAL VIOLATION Brief description of cause of action: US CONSTITUTION US FREE CITIZEN RULE (LOCAL) 5.4 NEITHER THE WRONGS NOT THE PRISONER BY 28 USC 1915 28 USC 453 (CARRIED BY 28 USC 2071)																																																								
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P DEMANDS \$0,000 AND CORRECT LAW (5.4)																																																								
(VIII) RELATED CASE(S) IF ANY		NO PENDING CASES (see CIVIL COVER SHEET INSTRUCTIONS) JUDGE: _____ DOCKET NUMBER: _____																																																								
DATE <u>02/10/2020</u>		SIGNATURE OF ATTORNEY OF RECORD <u>Antonia W. Shields</u> , <u>pro se</u>																																																								
FOR OFFICE USE ONLY																																																										
RECEIPT #		AMOUNT		APPLYING IPP																																																						
				JUDGE																																																						
				MAG. JUDGE																																																						
				APPENDIX TO PETITION p. 14 (APP.D)																																																						

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1335 and 1338. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

Original Proceedings. (1) Cases which originate in the United States district courts..

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

APPENDIX TO THE PETITION

p.15.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ELECTRONIC NOTICE OF CIVIL APPEAL & CLERK'S CERTIFICATION

Dear Clerk of the Court,

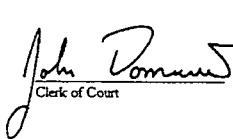
Please take notice that on September 30, 2020 the court received a notice of appeal. This notice serves to inform you of the pending appeal and provides you with the information needed to process the appeal.

I, JOHN M. DOMURAD, CLERK, U.S. District Court for the Northern District of New York, DO, HEREBY CERTIFY that the foregoing docket entries, with the exception of the documents listed below, are maintained electronically on the court's CM/ECF system and constitute the Record on Appeal in the below listed action.

The following documents are *not* available electronically. Please notify the Syracuse Clerk's Office if you need any of the following documents:

Docket No.(s): ____

IN TESTIMONY WHEREOF, I have hereunto set my hand
and caused the Seal of said Court to be hereto affixed at the
City of Utica, New York, this 7th day of October, 2020.


John M. Domurad
Clerk of Court



By: s/ Helen M. Reese
Deputy Clerk

Case Information

Case Name & Case No. Antonia W. Shields v. United States

1:20-CV-0152 (GTS/CFH)

Docket No. of Appeal: 13

DocumentsAppealed: 10 & 11

Fee Status: Paid Due Waived (IFP/CJA) X
IFP revoked Application Attached IFP pending before USDJ

Counsel: Retained Pro Se

Time Status: Timely Untimely

Motion for Extension of Time: Granted Denied

Certificate of Appealability: Granted Denied N/A

****Please note that the Fee Status is Waived-IFP, the Dkt. No. 2 - Motion for Leave to Proceed
In Forma Pauperis was Granted at Dkt. No. 5 - Report-Recommendation and Order dated April
30, 2020.

*APPENDIX TO PETITION p.16.
(APP: E)*

of \$50 (as approved by the Judicial Conference at its March, 2013 session) for a total fee to file a civil case of \$400. 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. If the Court denies your *in forma pauperis* application, you must pay the full civil case fee of \$400.00 within a certain period of time or your action will be dismissed.

In addition to waiving the obligation to pay the filing fee, being granted permission to proceed *in forma pauperis* entitles a person to: (1) submit a motion for appointment of counsel; and (2) have his or her complaint served on the defendant(s) by the U.S. Marshals Service. If you are not proceeding with your action *in forma pauperis*, you will be responsible for serving the summons and complaint on each defendant, in accordance with Federal Rule of Civil Procedure 4.

You may submit an *in forma pauperis* application at any time during the litigation, even if you have already paid the filing fee in full. However, you should note that being permitted to proceed *in forma pauperis* after you have paid the fee will not entitle you to the return of the money you have paid.

Pro se litigants proceeding *in forma pauperis* are not exempt from other fees and costs in their actions, including but not limited to copying and witness fees. Thus, pro se litigants must still provide identical copies of documents that must be served on the parties that they name in their lawsuit. If you cannot afford to pay for copies, you must handwrite copies of these documents for service on the other parties to the action.

It is important to realize that, even though you believe you cannot afford to pay for copies

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTONIA W. SHIELDS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

No. 1:20-CV-152
(GTS/CFH)

Defendant.

APPEARANCES:

Antonia W. Shields
P.O. Box 195
Saratoga Springs, New York 12866
Plaintiff pro se

REPORT-RECOMMENDATION AND ORDER

I. In Forma Pauperis

Plaintiff pro se Antonia W. Shields commenced this action on February 13, 2020, by filing a complaint. See Dkt. No. 1 ("Compl.").¹ Plaintiff also filed a motion to proceed in forma pauperis ("IFP"). See Dkt. No. 2. The undersigned has reviewed plaintiff's IFP application and has determined that plaintiff financially qualifies to proceed IFP.²

II. Initial Review

¹ The Court has dismissed plaintiff's two previous lawsuits. See Shields v. Klein, No. 1:18-CV-835 (MAD/CFH) (dismissing with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim); Shields v. New York State, No. 1:14-CV-00624 (DNH/TWD) (dismissing plaintiff's complaint for failure to comply with Court Order).

² Plaintiff is advised that although she has been granted IFP status, she is still required to pay any fees and costs she may incur in this action, including but not limited to copying fees, transcript fees, and witness fees.

A. Legal Standard

Section 1915 of Title 28 of the United States Code directs that, when a plaintiff seeks to proceed IFP, "the court shall dismiss the case at any time if the court determines that . . . 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." 28 U.S.C. § 1915(e)(2)(B). Thus, it is a court's responsibility to determine that a plaintiff may properly maintain his complaint before permitting him to proceed with his action.

Where, as here, the plaintiff proceeds pro se, "the court must construe his submissions liberally and interpret them to raise the strongest arguments that they suggest." Kirkland v. Cablevision Sys., 760 F.3d 223, 224 (2d Cir. 2014) (per curiam) (internal quotation marks omitted). However, this does not mean the Court is required to accept unsupported allegations that are devoid of sufficient facts or claims. Although detailed allegations are not required at the pleading stage, the complaint must still include enough facts to provide the defendants with notice of the claims against them and the grounds upon which these claims are based. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic v. Twombly, 550 U.S. 544, 555-56 (2007). Ultimately, the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570.

Pleading guidelines are set forth in the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Specifically, Rule 8 provides that a pleading which sets forth a claim for relief shall contain, among other things, "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). "The purpose . . . is to give fair

notice of the claim being asserted so as to permit the adverse party the opportunity to file a responsive answer, prepare an adequate defense and determine whether the doctrine of res judicata is applicable." Flores v. Graphtex, 189 F.R.D. 54, 54 (N.D.N.Y. 1999) (internal quotation marks and citations omitted). Rule 8 also requires the pleading to include:

- (1) a short and plain statement of the grounds for the court's jurisdiction . . .
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought . . .

FED. R. CIV. P. 8(a). Although "[n]o technical form is required," the Federal Rules make clear that each allegation contained in the pleading "must be simple, concise, and direct." Id. at 8(d).

Further, Rule 10 of the Federal Rules provides in pertinent part that:

[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence – and each defense other than a denial – must be stated in a separate count or defense.

☒ FED. R. CIV. P. 10(b). This serves the purpose of "provid[ing] an easy mode of identification for referring to a particular paragraph in a prior pleading[.]" Flores, 189 F.R.D. at 54 (internal quotation marks and citations omitted). A complaint that fails to comply with the pleading requirements "presents far too a heavy burden in terms of defendants' duty to shape a comprehensive defense and provides no meaningful basis for the Court to assess the sufficiency of their claims." Gonzales v. Wing, 167 F.R.D.

352, 355 (N.D.N.Y. 1996). As the Second Circuit has held, “[w]hen a complaint does not comply with the requirement that it be short and plain, the court has the power, on its own initiative . . . to dismiss the complaint.” Salahuddin v. Cuomo, 861 F.2d 40, 42 (2d Cir. 1988) (citations omitted). However, “[d]ismissal . . . is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.” Id. (citations omitted). In such cases of dismissal, particularly when reviewing a pro se complaint, the court generally affords the plaintiff leave to amend the complaint. See Simmons v. Abruzzo, 49 F.3d 83, 86-87 (2d Cir. 1995). A court should not dismiss a complaint if the plaintiff has stated “enough facts to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678 (citation omitted).

B. Plaintiff’s Complaint

The complaint states that Northern District of New York Local Rule (“N.D.N.Y.L.R.”) 5.4 violates the “Equal Rights clause of United States law 28 U.S.C. § 453” “by arbitrarily requiring standard of review [sic] 28 U.S.C. § 1915” of plaintiff, a “free citizen” “determined poor, unlike requiring standard of review separate from 28 U.S.C. § 1915 for if [plaintiff] were rich.” Compl. at 5. Generously construing the complaint, plaintiff argues that, by reviewing her IFP application in her prior lawsuit pursuant to N.D.N.Y.L.R. 5.4 and 28 U.S.C. § 1915, the Court inappropriately labeled her a “prisoner.” Id. Plaintiff requests as relief (1) “a good change in [N.D.N.Y.L.R.] 5.4,

corrected by 28 U.S.C. § 2072 to not violate the U.S. Constitution's preamble," and (2) "\$10,000 for harm done." Id. at 6.

C. Analysis³

1. Sovereign Immunity

"Under the Constitution, the United States Government possesses absolute immunity from suit in its courts without its consent 'and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.'" Smith v. Brown, 296 F. Supp. 3d 648, 660 (S.D.N.Y. 2017) (quoting United States v. Sherwood, 312 U.S. 584, 586 (1941)) (further citations omitted). "The doctrine of sovereign immunity is jurisdictional in nature," Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000), and "[a]bsent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." F.D.I.C. v. Meyer, 510 U.S. 471, 475 (1994); see United States v. Mitchell, 463 U.S. 206, 212 (1983) ("It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction."). Here, plaintiff names the United States as the sole defendant in this action and does not argue or present any facts from which the undersigned could plausibly infer that her claims fall within an applicable waiver. See Compl. at 1. Thus, plaintiff's claims are barred by the doctrine of sovereign immunity and the Court lacks subject matter jurisdiction over this matter. See Makarova, 201 F.3d at 113; Meyer, 510 U.S. at 475.

³ All unpublished opinions cited in this Report-Recommendation and Order, unless otherwise noted, have been provided to plaintiff.

2. Review of Merits of Claims

Plaintiff's argument that N.D.N.Y.L.R. 5.4 is violative of her constitutional rights because, by requiring the Court to review her IFP motion relating to her prior lawsuit pursuant to the standard set forth in 28 U.S.C. § 1915, she was inappropriately labeled a prisoner, is meritless. See Compl. at 5. N.D.N.Y.L.R. 5.2(a) expressly states that Title 28 U.S.C. § 1915 and N.D.N.Y.L.R. 5.4 "govern *in forma pauperis* proceedings." Although N.D.N.Y.L.R. 5.4—which is effectively a restatement of 28 U.S.C. § 1915—discusses IFP motions in reference to "prisoner litigants" in the context of the Prison Litigation Reform Act ("PLRA"), it is well-established that Section 1915 applies to inmates and non-inmates equally. N.D.N.Y. L.R. 5.4(a). "While the text of 28 U.S.C. § 1915(a)(1) appears to only provide for the [IFP] status of prisoner litigants, it is well-established that [Section] 1915(a)(1) affords all natural persons with the opportunity to apply for permission to proceed without prepayment of fees." Egnatski v. Mortilla, No. 06-CV-1405 (JS/ARL), 2006 WL 8452994, at *2 n.2 (E.D.N.Y. July 21, 2006); see Leonard v. Lacy, 88 F.3d 181, 183 (2d Cir. 1996) (listing the PLRA's revisions to 28 U.S.C. § 1915 and recognizing that the use of "prisoner" in Section 1915(a)(1) was error by inserting "[sic]" in the quotation from the PLRA); Powell v. Hoover, 956 F. Supp. 564, 566 (M.D. Pa. 1997) (holding that "a fair reading of [Section 1915 in its entirety] is that it is not limited to prisoner suits").

Moreover, insofar as the complaint may be read as asserting a similar, but distinct claim, that N.D.N.Y.L.R. 5.4 and Section 1915 force the Judges of the Northern District of New York to violate their oath contained in 28 U.S.C. § 453 to "do equal right to the poor and to the rich" by requiring them to apply different standards to the rich and

poor, plaintiff's claim lacks merit. See Compl. at 2. It is well-settled that the purpose of Section 1915 is to ensure that indigent persons are not prevented from accessing the courts due to their inability to pay filing fees. See, e.g., Hobbs v. County of Westchester, No. 00-CV-8170(JSM), 2002 WL 868269, at *1 (S.D.N.Y. May 3, 2002) ("The purpose of the statute permitting litigants to proceed [IFP] is to insure that indigent persons have equal access to the judicial system."). The Court reviews IFP motions "to weed out the litigants who falsely underestimate their net worth in order to obtain [IFP] status when they are not entitled to that status based on their true net worth" and "[t]o discourage abuse of [the] privilege" of proceeding IFP—not to discriminate against those seeking to properly avail themselves of IFP status. Cuoco v. U.S. Bureau of Prisons, 328 F. Supp. 2d 463, 467 (S.D.N.Y. 2004) (internal quotation marks and citations omitted).

To the extent plaintiff argues that N.D.N.Y.L.R. 5.4 and Section 1915 require the Court to discriminate against indigent litigants by subjecting their complaints to a review of the sufficiency of the complaint, which could result in dismissal of their action, but not complaints of those who pay the filing fee, her argument lacks merit. See Compl. at 5. Although the district court may dismiss meritless claims of a litigant seeking to proceed IFP, it is equally true that the district court may *sua sponte* dismiss meritless claims of a litigant who has paid the filing fee. See Mauro v. Hireright, No. 5:19-CV-1343 (GLS/ATB), 2019 WL 5788561, at *2 (N.D.N.Y. Nov. 6, 2019) ("Although [the] plaintiff has paid the filing fee, the district court has 'the inherent authority to *sua sponte* dismiss a fee-paid action as frivolous.'") (quoting Mendez Da Casta v. Marcucilli, 792 F. App'x

865, 867 (2d Cir. 2019)). Consequently, even assuming that the Court could exercise jurisdiction over this matter, which it cannot, plaintiff's complaint fails to state a claim.

3. Leave to Amend

When addressing a pro se complaint, a district court generally "should not [be] dismiss[ed] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." Shomo v. City of New York, 579 F.3d 176, 183 (2d Cir. 2009) (internal quotation marks and citation omitted).

However, the court is not required to grant leave to amend when doing so would be futile. See Cuoco v. Mortisugu, 222 F.3d 99, 112 (2d Cir. 2000). Here, because "[t]he problem[s] with [plaintiff's] causes of action [are] substantive[,] better pleading will not cure [them,]" and any attempt to amend would, therefore, be futile. Id. Accordingly, it is recommended that plaintiff's complaint be dismissed in its entirety with prejudice and without opportunity to amend.

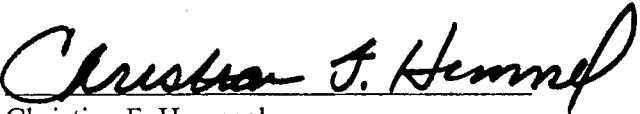
III. Conclusion

WHEREFORE, for the reasons set forth herein, it is hereby
ORDERED, that plaintiff's motion to proceed in forma pauperis (Dkt. No. 2) is
GRANTED for purposes of filing only; and it is
RECOMMENDED, that plaintiff's complaint (Dkt. No. 1) be **DISMISSED WITH
PREJUDICE AND WITHOUT OPPORTUNITY TO AMEND**; and it is further
ORDERED, that the Clerk of the Court serve this Report-Recommendation &
Order on plaintiff in accordance with Local Rules.

IT IS SO ORDERED.

Pursuant to 28 U.S.C. § 636(b)(1), plaintiff has **FOURTEEN (14)** days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN (14) DAYS WILL PRECLUDE APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993) (citing Small v. Sec'y of Health and Human Servs., 892 F.2d 15 (2d Cir. 1989)); see also 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72 & 6(a).⁴

Dated: April 30, 2020
Albany, New York


Christian F. Hummel
U.S. Magistrate Judge

⁴ If you are proceeding pro se and are served with this Order by mail, three additional days will be added to the fourteen-day period, meaning that you have seventeen days from the date the Order was mailed to you to serve and file objections. FED. R. CIV. P. 6(d). If the last day of that prescribed period falls on a Saturday, Sunday, or legal holiday, then the deadline is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. Id. § 6(a)(1)(C).

CLOSED, PRO SE

U.S. District Court
Northern District of New York - Main Office (Syracuse) [NextGen CM/ECF Release
1.3 (Revision 1.3.6)] (Albany)
CIVIL DOCKET FOR CASE #: 1:20-cv-00152-GTS-CFH
Internal Use Only *(APP. 6)*

Shields v. United States

Assigned to: Chief Judge Glenn T. Suddaby

Referred to: Magistrate Judge Christian F. Hummel

Demand: \$10,000

Cause: 42:1983 Civil Rights Act

Date Filed: 02/12/2020

Date Terminated: 09/11/2020

Jury Demand: None

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Federal Question

Plaintiff

Antonia W. Shields

represented by **Antonia W. Shields**

P.O. Box 195

Saratoga Springs, NY 12866

Email:

PRO SE

V.

Defendant

United States

Email All Attorneys

Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
02/12/2020	<u>1</u>	COMPLAINT against United States filed by Antonia W. Shields. (Attachments: # <u>1</u> Civil Cover Sheet)(hmr) (Entered: 02/13/2020)
02/12/2020	<u>2</u>	MOTION for Leave to Proceed in forma pauperis filed by Antonia W. Shields. Motions referred to Christian F. Hummel. (hmr) (Entered: 02/13/2020)
02/13/2020	<u>3</u>	PRO SE HANDBOOK (Packet) and NOTICE mailed to pro se plaintiff via regular mail on 2/13/2020. (hmr) (Entered: 02/13/2020)
02/20/2020	<u>4</u>	PRO SE HANDBOOK and NOTICE returned executed by Antonia W. Shields. (Attachments: # <u>1</u> Cover letter, # <u>2</u> Mailing envelope) (see) (Entered: 02/21/2020)
04/30/2020	<u>5</u>	REPORT-RECOMMENDATION AND ORDER: re <u>1</u> Complaint filed by Antonia W. Shields: that plaintiff's motion to proceed in forma pauperis (Dkt. No. <u>2</u>) is Granted for purposes of filing only; Recommended, that plaintiff's complaint (Dkt. No. <u>1</u>) be Dismissed with prejudice and without opportunity to

APPENDIX TO PETITION P. 27
(APP. H)

		amend; and that the Clerk of the Court serve this Report-Recommendation & Order on plaintiff in accordance with Local Rules. (Objections to R&R due by 5/14/2020, Case Review Deadline 5/18/2020), Motions terminated: <u>2</u> MOTION for Leave to Proceed in forma pauperis filed by Antonia W. Shields. Signed by Magistrate Judge Christian F. Hummel on 04/30/2020. (Attachments: # <u>1</u> Unpublished Cases) [A copy of this Report-Recommendation and Order, together with the unpublished cases were served upon pro se plaintiff via regular mail at P.O. Box 195, Saratoga Springs, NY 12866 on 4/30/2020.] (hmr) (Entered: 04/30/2020)
05/06/2020	<u>6</u>	OBJECTIONS to <u>5</u> Report and Recommendations by Antonia W. Shields. (hmr) (Entered: 05/06/2020)
06/10/2020	<u>7</u>	Letter Motion from Antonia W. Shields requesting a three judge decision and a copy of the docket sheet. [A copy of the docket sheet was mailed to pro se plaintiff via regular mail on 6/11/2020.] (Attachments: # <u>1</u> Envelope)(hmr) (Entered: 06/11/2020)
06/15/2020	<u>8</u>	TEXT ORDER denying with prejudice <u>7</u> Plaintiff's request for a three-judge court for each of the following two reasons. First, Plaintiff has failed to "submit the first pleading in which [Plaintiff] asserts the cause of action requiring a three-judge court," as required by Local Rule 9.1 of the District' s Local Rules of Practice. Second, in any event, Plaintiff has failed to show either that the convening of a three-judge panel is "required by Act of Congress" or that Plaintiff's action "challeng[es] the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body," as required by 28 U.S.C. § 2284(a). SO ORDERED by Chief Judge Glenn T. Suddaby on 6/15/2020. (Copy served upon Plaintiff via regular mail). (sal) (Entered: 06/15/2020)
06/19/2020	<u>9</u>	Letter Motion from Antonia W. Shields requesting status of the case. (Attachments: # <u>1</u> Envelope)(hmr) (Entered: 06/22/2020)
06/22/2020		Clerk mailed a copy of the docket sheet, in response to the <u>9</u> letter motion requesting status of case on 6/22/2020 by regular mail. (see) (Entered: 06/22/2020)
09/11/2020	<u>10</u>	DECISION AND ORDER that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. <u>5</u>) is ACCEPTED and ADOPTED in its entirety. Plaintiff's Complaint (Dkt. No. <u>1</u>) is DISMISSED with prejudice and without prior leave to amend pursuant to 28 U.S.C. § 1915(e)(2)(B). Signed by Chief Judge Glenn T. Suddaby on 9/11/2020. (Copy served upon Plaintiff via regular and certified mail). (sal) (Entered: 09/11/2020)
09/11/2020	<u>11</u>	JUDGMENT that, pursuant to the Decision and Order issued on September 11, 2020 (Dkt. No. <u>10</u>) by the Honorable Glenn T. Suddaby, that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. <u>5</u>) is ACCEPTED and ADOPTED in its entirety. Plaintiff's Complaint (Dkt. No. <u>1</u>) is DISMISSED with prejudice and without prior leave to amend pursuant to 28 U.S.C. § 1915(e)(2)(B). The Clerk is directed to CLOSE this action. All of the above pursuant to the Decision and Order issued by the Honorable Glenn T. Suddaby, dated September 11, 2020. Dkt. No. <u>10</u> .(Copy served upon Plaintiff via regular and

APPENDIX TO PETITION p:28

[redacted] certified mail). (sal) (Entered: 09/11/2020)

APPENDIX TO PETITION p.29