

No. 20-6860

IN THE
SUPREME COURT OF THE UNITED STATES

Antonia W. Shields, *Petitioner*

v.

United States, *Respondent*

On Reply to the Acting Solicitor General's Response
to the United States Court of Appeals for the Second Circuit

Judgment pending

Reply to Acting Solicitor General's Response

requested in

U.S. Supreme Court Notice and on U.S. Supreme Court Docket

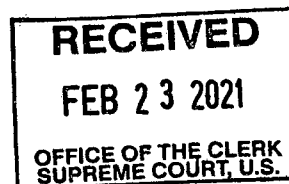
“(Response due February 12, 2021)”

Antonia W. Shields, pro se
Antonia W. Shields, pro se (REPLY) February 18, 2021

PO Box 195

Saratoga Springs, New York 12866

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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 ?

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CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS (Reply)

CONSTITUTION OF THE UNITED STATES

U.S. Const. pmb.

“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. 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. V.

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

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

“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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATUTES

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. § 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. § 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

RULES

Fed. R. Civ. P. 24(b)(3)

“Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original part(y’s) rights.”

Fed. R. Civ. P. 83(a)

“...A local rule must be consistent with-but not duplicate - federal statutes and rules adopted under 28 U.S.C. § 2072 ..., and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States....”

2020 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.

2020 NDNY Local Rule 5.4

U.S. district court NDNY *pro se* Handbook (Civilian)
Revision Date 3/24/2015 - 2020) 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....”

THE ARGUMENT (REPLY)

U.S. Supreme Court's request to file a response to the petition in this federal question civil action case 20-6860 happened in January 2021.

On January 17, 2021, *pro se* Shields was able to read U.S. Supreme Court internet Docket that, in plain sight for the public, said, "(Response due February 12, 2021)." Also, petitioner Shields served the Government through USPS on paper. It was postmarked January 19, 2021, addressed to the Acting Solicitor General, with zip code 20530, notice of the U.S. Supreme Court's request to respond to the petition in this case by February 12, 2021. Reply App. 1-2 .

So, on February 12, 2021, the Government, submitted its response to the U.S. Supreme Court. Docket-title "Waiver of United States of right to respond submitted" shows, inside the document is, "The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court." Yet, the U.S. Supreme Court, in the proper notice petitioner Shields had served, had requested the Government's response by Friday, February 12, 2021 and also writing, on the public U.S. Supreme Court Docket, "Response due February 12, 2021." Thus, the January 28, 2021 Court Docket's Acting Solicitor General decided. Reply App. 3.

The Government waived its Waiver.

This Reply is to that Government's Response; Petitioner Shields is *pro se*.

New material violates 28 U.S.C. § 453.

Not only does U.S. district court NYND *pro se* Handbook (Civilian) Rev. 3/24/2015 - 2020 p. 17 Directive "...if you are unable to pay the fee, you must submit an application to proceed *in forma pauperis* along with your complaint..." (Pet. App. 17.) conflict with federal statute 28 U.S.C. § 453, the new 2021 *pro se* Handbook Directive, its page 18, conflicts with federal statute 28 U.S.C. § 453, too. It reads, "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." (Reply App. 4). Petitioner Shields filed federal question civil action arising under the Constitution, laws ... of the United States. 28 U.S.C. § 1331 gives U.S. district court original jurisdiction, along with 28 U.S.C. § 1346(a)(2) with Shields choosing the U.S. district court for filing the "action...against the United States, not exceeding \$10,000 in amount, founded upon...the Constitution...." Why this is important is, on the first page after the cover, the questions address Constitutional foundation of whether standard of review 28 U.S.C. § 1915 violates federal statute 28 U.S.C. § 453 for free, U.S. citizen Shields, poor, not equal to a free, U.S. citizen, rich,

standard of review. To require *pro se* Shields, unable to pay fee to file civil complaint, to apply to proceed *in forma pauperis* is 28 U.S.C. §1915 standard of review. But, to “do equal right to the poor and to the rich” is the law, 28 U.S.C. § 453. Not to do equal right to the poor and to the rich is illegal.

The Government continued not to protect Shields on February 12, 2021.

U. S. Const. amend. V. through equal protection in U.S. Const. amend. XIV. includes Government responsibility to uphold Shields’s equal protection. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

Not protecting a U.S. citizen from Constitutional violative harm is plainly wrong if the Government fails. Example:

If Officer Sicknick were protected, by our nation’s top authority when notified to “insure domestic Tranquility” for the United States, then Brian D. Sicknick, United States Capitol Police Officer, might be alive.

This Reply peacefully petitions the Government for redress of grievances against wrong precedent discretionary decision on September 11, 2020. Pet. App. 1. And, the questions on the first page after the cover ask if governmental use of this different standard of review, 28 U.S.C. § 1915, undoes equal right to the poor and to the rich. Equal right to the poor and to the rich is important because in

***pro se* Shields's case, 28 U.S.C. § 1915 standard of review is written for prisoners; 28 U.S.C. § 1915 standard of review precedent is not exercised equitably for any free person. All the poor are not prisoners, only some. In fact, some of the rich are prisoners. *Pro se* free U.S. citizen Shields has never been a prisoner. 28 U.S.C. § 1915 standard of review is not a sound discretionary decision.**

Additional new material violates governmental protection for U.S. Constitution equal protection.

A new number for U.S. district court NDNY L.R. 5.4 is NDNY L.R. 5.1.4. Reply App. 5-6. The questions (on first page after the cover) ask about NDNY Local Rule 5.4. In *pro se* Shields's case, the Government is the other party because 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." Fed. R. Civ. P. 83 says, "...A local rule must be consistent with - but not duplicate - federal statutes and rules adopted under 28 U.S.C. § 2072 ("...such rules shall not abridge...any substantive right ...) ...and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States...." NDNY L.R. 5.1.4 does not resemble Fed. Rule of Civil Procedure 5.1. And, NDNY L.R. 5.1.4 continues a 28 U.S.C. § 1915 unconstitutional provision against

***pro se* Shields, just as NDNY L.R. 5.4 does: 28 U.S.C. § 1915(g) review for *sua sponte* dismissal abridges (reduces) Shields's substantive right to petition the Government for a redress of grievances, against Shields's first Amendment right of the U.S. Constitution, each time 28 U.S.C. 1915(g) is there. Reply App 7- 8. And, new 2021 U.S. district court NDNY *pro se* Handbook, Chapter XII. Ending a Case Before Trial - *sua sponte* dismissal by the Court confirms on its page 42. Reply App. 10.**

***Ledbetter v. Goodyear Tire and Rubber Co., Inc.*, 550 U.S. 618 (2007) (Ginsburg, J., dissenting) initiated Congress's Lilly Ledbetter Fair Pay Act - each pay, not equal, counts separately as an arbitrary act of discrimination. So, too, *pro se* Shields asserts, by U.S. Constitution Amendment X. that "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." Shields is one of the people of the United States. Thereby, each 28 U.S.C. § 1915 Order, not to do equal right to the non-prisoner poor and to the non-prisoner rich, counts separately as an arbitrary act of discrimination against the free poor (Shields) petitioning the Government for a redress of grievances, when unable to pay the fee to file. The discretionary decision on September 11, 2020 is not reasonable.**

Of such imperative public importance, the Government must give Shields a fair way to file a federal question civil action in federal district court NDNY where Local Rules (need to be in keeping with 28 U.S.C. § 2072) and not in conflict with the new *pro se* Handbook (that still needs to be in keeping with 28 U.S.C. § 2072). The people are intelligent.

There is a new unintelligible Local Rule 3.5, that was not there in 2020. (App. to Reply 9). Local Rule 3.5 is not consistent with the clear, but unfair Directive in 2021 *pro se* Handbook on its page 18. (App. to Reply 4). 2021 Local Rule 3.5 implies a free *pro se* person, unable to afford to pay the fee to file a complaint can send a complaint in without the fee; it is not clear. Yet, the 2021 *pro se* Handbook on its page 18 says, if you cannot pay the fee to file a complaint you must file application to proceed *in forma pauperis*. Reply App. 4. This is not proper for Local Rule 3.5 to be ambiguous compared with page 18 of the 2021 *pro se* Handbook Directive.

Further, pages 42 of the new 2021 *pro se* Handbook confirms “if a plaintiff has filed in forma pauperis, Title 28 section 1915 of the United States Code governs his or her case...” In this case, it is her case for how the court dismissed prior to trial. Reply App. 10.

Yet, Fed. R. Civ. P. 24(b)(3) protects against delay or prejudice:

“In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.”

The Government has failed to protect Shields’s Blessings of Liberty.

On the first page after the cover, the questions ask,

“...For free U.S. citizen Shields filing civil action, does governmental use of this different (28 U.S.C. § 1915 *in forma pauperis*) standard of review 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? (Shields is *pro se*)

Shields’s Liberty, “freedom from arbitrary restraint,” (Black’s Law Dictionary 8th ed. p. 937), has been violated. New precedent is needed not in violation of Judicial Oath. The culture in the United States has changed. The people of the United States want truth, and no one wants a judge to choose between Oath and precedent. The number of poor people has increased since November 30, 2020.

Abraham Lincoln, on February 22, 1861, in a speech in Philadelphia at Independence Hall, spoke about equality saying, “...It was that which gave promise that in due time the weights should be lifted from the shoulders of all men, and that *all* should have an equal chance....” This includes *pro se* Shields. Not to do so is not a moderate discretionary decision.

Shields is one of the people of the United States, with Amendment X. right of the people to request that the U.S. Supreme Court do a review under 28 U.S.C. § 2072 so that Shields's substantive rights are maintained and with hope that others of the people affected by this case, that their substantive rights are secured for that which can be restored from the past and that which can be guaranteed for the future. Martin Luther King, in a 1968 sermon at Ebenezer Baptist Church in Atlanta, Georgia, U.S.A., said, "...I was a drum major for justice, ... I was a drum major for peace...."

Justice can be achieved in a peaceful way by filing federal question civil action.

CONCLUSION

Respectfully, this petition for writ of certiorari, before Second Circuit final Decision, is requested to be granted, please, as 1915(g) may happen once more.

Respectfully submitted,

Antonia W. Shields, pro se
Antonia W. Shields, *pro se*
PO Box 195
Saratoga Springs, NY 12866
(315)368-4415

Date February 18, 2021

DECLARATION

Declaration in compliance with 28 U.S.C. §1746:

I verify under penalty of perjury that the foregoing is true and correct. Executed on February 18, 2021 Antonia W. Shields, pro se

*Antonia W. Shields, *pro se*
PO Box 195, Saratoga
Springs, NY 12866
(315)368-4415

*Shields is *pro se*.

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Accounts](#)

February 17, 2021

USPS Tracking Intranet Tracking Number Result



Price Change 1/26/2020:

USPS Premium Tracking: USPS will offer a fee-based service to extend the availability of tracking data on domestic competitive products for an additional 6 months up to 10 years. In addition, customers can also request a Premium Tracking Statement via email.

The Manual Entry Acceptance screen will be modified to use the Pricing Engine for all rates calculations. Users will no longer enter fees for Collect on Delivery (COD) and Additional Insurance; instead, users will enter the dollar amount to be collected for COD or the insured value for Insurance.

Result for Domestic Tracking Number 9505 5136 4992 1019 7260 68

Tracking Expires On
May 19, 2021

Destination and Origin

Destination

ZIP Code	City	State
20530	WASHINGTON	DC

Origin

ZIP Code	City	State
128666777	SARATOGA SPRINGS	NY

Tracking Number Classification

Class/Service

Class/Service: Priority Mail USPS Tracking
Class of Mail Code/Description: PM / Priority Mail®

Origin / Return / Pickup Address Information

Address:
City:
State:
5-Digit ZIP Code: 12866
4-Digit ZIP Code add on: 6777

Service Delivery Information

Service Performance Date: Expected Delivery by: Friday, 01/22/2021
Delivery Option Indicator: 1 - Normal Delivery
Zone: 03
PO Box: N
Other Information: [Service Calculation Information](#)

Payment

Payment Type: Other Postage
Payment Account Number: 000000000000
Postage: \$7.85
Weight: 0 lb(s) 2 oz(s)
Rate Indicator: Single-Piece Rate

Other Information

Firm Label ID: 5103 0SHF 1760 4387 3084

Agent Information:

[Request Internal USPS Tracking Plus Statement](#)

Extra Services

Extra Services Details

Description	Amount

(REPLY APP. I)

REPLY APPENDIX PAGE 1

Description		Amount	
USPS Tracking			
Insurance <= \$500		\$0.00	
Up to \$50 insurance included		\$0.00	

Events									
Event	Event Code	Event Date	Event Time	Location	Input Method	Scanner ID	Carrier Route	Posting Date / Time (Central Time)	Other Information
DELIVERED	01	01/25/2021	04:44	WASHINGTON, DC 20530	Firm Book	IMD C3CSHA8187 (non-wireless)	Scanned by route 00000000	01/25/2021 10:01:03	Firmbook: 510305SHE175043873084 Facility Finance Number: 195010 Firm Name: JUSTICE 20530
AVAILABLE FOR PICKUP	14	01/24/2021	10:22	WASHINGTON, DC 20530	Firm Book	IMD C3CSGUD413 (non-wireless)	Scanned by route 00000000	01/24/2021 09:51:06	Firmbook: 510305SHE175043873084
ARRIVAL AT UNIT	07	01/24/2021	09:51	WASHINGTON, DC 20018	Firm Book	IMD C3CSHF1750 (non-wireless)	Scanned by route 11111111	01/24/2021 09:23:07	Firmbook: 510305SHE175043873084 OFD Sunday PC / OF Reason Code
ENROUTE/PROCESSED	10	01/23/2021	11:19	WASHINGTON, DC 20066	Scanned	SPBSTS-002-000003		01/23/2021 10:34:11	
ENROUTE/PROCESSED	10	01/23/2021	05:02	WASHINGTON, DC 20066	Scanned	SPBSTS-010-0003		01/24/2021 02:03:05	
ARRIVE USPS FACILITY	U1	01/22/2021	06:09	WASHINGTON, DC 20066	Container Generated	S019921373		01/22/2021 07:29:55	Container Type: GAYLORD 4FT Container ID: 99P200-181812XJL-45777626
ARRIVE USPS FACILITY	U1	01/21/2021	22:30	HYATTSVILLE, MD 20785	Container Generated	S018602298		01/21/2021 22:12:17	Container Type: GAYLORD 4FT Container ID: 99P200-181812XJL-45777626
ARRIVE USPS FACILITY	U1	01/21/2021	21:34	HYATTSVILLE, MD 20785	Container Generated	S018607660		01/21/2021 21:03:27	Container Type: GAYLORD 4FT Container ID: 99P200-181812XJL-45777626
ARRIVE USPS FACILITY	A1	01/21/2021	15:57	HYATTSVILLE, MD 20785	Container Generated	S018601817		01/21/2021 15:25:16	Container Type: GAYLORD 4FT Container ID: 99P200-181812XJL-45777626
DEPART USPS FACILITY	T1	01/21/2021	07:04	ALBANY, NY 12288	Container Generated	S018904723		01/21/2021 06:42:17	Container Type: GAYLORD 4FT Container ID: 99P200-181812XJL-45777626
DEPART USPS FACILITY	L1	01/21/2021	06:03	ALBANY, NY 12288	Container Generated	S017604463		01/21/2021 06:00:06	Container Type: GAYLORD 4FT Container ID: 99P200-181812XJL-45777626
CONTAINER CLOSE	C1	01/20/2021	15:20	ALBANY, NY 12288	Container Generated	S018606687		01/20/2021 14:54:18	Container Type: GAYLORD 4FT Container ID: 99P200-181812XJL-45777626
ENROUTE/PROCESSED	10	01/20/2021	09:22	ALBANY, NY 12288	Scanned	SPBSTS-001-000001		01/20/2021 08:33:10	
DEPART POST OFFICE	SF	01/19/2021	17:43	SARATOGA SPRINGS, NY 12866	System Generated			01/19/2021 17:07:05	Closeout Label ID: C114 3349 7832 2101 1918 8489 000
ACCEPT OR PICKUP	03	01/19/2021	16:03	SARATOGA SPRINGS, NY 128666777	Scanned	RSS POS364992		01/19/2021 15:30:05	Facility Finance Number 357093

Enter up to 35 items separated by commas.

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REPLY APPENDIX PAGE 2.

IN THE SUPREME COURT OF THE UNITED STATES

SHIELDS, ANTONIA W.
Petitioner

vs.

No: 20-6860

USA

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record

February 12, 2021

cc:

ANTONIA W. SHIELDS
P.O. BOX 195
SARASOTA SPRINGS, NY 12866

(REPLY APP. J)
REPLY APPENDIX PAGE 3.

6. Exhibits: While you may choose to submit one or more exhibits along with your complaint, you must set forth your complete claims in the body of your complaint and may not incorporate the exhibits by reference as a means of setting forth your claims. You do not need to submit as exhibits all papers that might be relevant to your complaint and/or used at trial. If you do choose to submit exhibits you must reference those exhibits, by page number, in the body of your complaint. Also, you should only submit copies of documents rather than originals, because the Court will not return your exhibits to you.

7. Privacy Protection: Local Rule 5.2 requires litigants to redact (omit or obscure) certain information from their pleadings and from any exhibits attached to pleadings. Information that must be redacted includes: social security numbers and taxpayer identification numbers, names of minor children, dates of birth, financial account numbers, home addresses, and names of sexual assault victims.

Transcripts of the administrative record in social security proceedings do not need to have the above personal identifiers redacted.

B. FILING FEES AND *IN FORMA PAUPERIS*

Most civil complaints must be submitted with the filing fee set forth in 28 U.S.C. §1914(a), which is currently three hundred and fifty dollars (\$350.00) plus an additional Administrative fee of \$52 for a total fee to file a civil case of \$402. 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*

(REPLY APP, K)
REPLY TO APPENDIX PAGE 4.
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5.1.1. Electronic Case Filing

All cases filed in this Court may be assigned to the Electronic Case Files System ("ECF") in accordance with the Procedural Order on Electronic Case Filing (General Order #22), the provisions of which are incorporated herein by reference, and which the Court may amend from time to time. Copies of General Order # 22 are available at the Clerk's office or at the Court's webpage at www.nynd.uscourts.gov.

5.1.2 Prepayment of Fees (formerly L.R. 5.2)

(a) **Filing Fees.** A party commencing an action or removing an action from a state court must pay to the Clerk the statutory filing fee before the case will be docketed and process issued. Title 28 U.S.C. § 1915 and L.R. 5.1.4 govern in forma pauperis proceedings.

5.1.3 Schedule of Fees (formerly L.R. 5.3)

Fee schedules are available at the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov".

5.1.4 Civil Actions Filed *In Forma Pauperis*; Applications for Leave to Proceed *In Forma Pauperis* (formerly L.R. 5.4)

(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. 3.1. 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 form issued by the Clerk's office.

(REPLY APP. L) REPLY APPENDIX p. 5

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.

5.1.5 Filing by Facsimile or E-mail (formerly L.R. 5.5)

Neither the Court nor the Clerk's Office will accept for filing any facsimile or e-mail transmission without prior authorization from the Court. The party using facsimile or e-mail transmissions to file its papers must accompany any such documents with a cover letter stating that the Court authorized such transmissions and the date on which the Court provided that authorization. Violations of this Rule subject the offending party to the Court's full disciplinary powers.

5.1.6 Documents to be provided to the Clerk (formerly L.R. 5.7)

All pretrial and settlement conference statements shall be provided to the Clerk but not filed. These documents are not available for public view. Forms for preparation of pretrial and settlement conference statements are available from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov".

5.1.7 Recording of Proceedings (formerly L.R. 5.8)

Recording of any court proceeding, regardless of the medium, is prohibited without prior notification and approval from the presiding judicial officer.

REPLY TO APPENDIX p. 6.

(b) **Miscellaneous Fees.** The Clerk is not required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the service is paid in advance.

5.3 Schedule of Fees

Fee schedules are available at the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

5.4 Civil Actions Filed *In Forma Pauperis*; Applications for Leave to Proceed *In Forma Pauperis*

(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 form 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.

(REPLY APP. M)
REPLY APPENDIX P-7.
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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.

5.5 Filing by Facsimile or E-mail

Neither the Court nor the Clerk's Office will accept for filing any facsimile or e-mail transmission without prior authorization from the Court. The party using facsimile or e-mail transmissions to file its papers must accompany any such documents with a cover letter stating that the Court authorized such transmissions and the date on which the Court provided that authorization. Violations of this Rule subject the offending party to the Court's full disciplinary powers.

5.6 Service of the Writ in Exclusion and Deportation Cases

Repealed on January 1, 2020.

5.7 Documents to be provided to the Clerk

All pretrial and settlement conference statements shall be provided to the Clerk but not filed. These documents are not for public view. Forms for preparation of pretrial and settlement conference statements are available from the Clerk's office or at the Court's webpage at "www.nynd.uscourts.gov."

5.8 Recording of Proceedings

Recording of any court proceeding, regardless of the medium, is prohibited without prior notification and approval from the presiding judicial officer.

6.1 Calculation of Time Periods

[Reserved]

REPLY APPENDIX p. 8.

3.3 Venue (formerly L.R. 3.2)

The Court's Civil Case Assignment Plan as set forth in General Order 12 shall control venue for civil cases filed in the Northern District of New York. When filing a related action, parties must comply with Section G of General Order 12.

3.4 Complex and Multi-District Litigation (formerly L.R. 3.3)

(a) If the assigned judge determines, in his or her discretion, that the case is of such a complex nature that it cannot reasonably be trial ready within eighteen months from the date the complaint is filed, the assigned judge may design and issue a particularized case management order that will move the case to trial as quickly as the complexity of the case allows.

(b) The parties shall promptly notify the Court in writing if any action commenced is appropriate for multi-district litigation.

3.5 Non-Incarcerated Pro Se Litigant: (added January 1, 2021)

(a) Upon receipt by mail of a complaint or petition from a non-incarcerated *pro se* litigant without the filing fee or a signed Application to Proceed *In Forma Pauperis*, the Clerk shall file the complaint or petition, assign the action in accordance with L.R. 3.1, and forward the action to a judicial officer for further review.

(b) This rule shall not limit the Clerk's authority to refuse to file any submission because that document is not clear, not properly filed, or otherwise non-compliance with legal file requirements.

3.6 Incarcerated Pro Se Litigant: (added January 1, 2021)

(a) On receipt of a complaint or petition subject to the Prison Litigation Reform Act, the Clerk shall promptly file and assign an action in accordance with L.R. 3.1 so as to ensure that a judicial officer may comply with the requirements set forth in L.R. 5.1.4(b)(2)(A).

(b) This rule shall not limit the Clerk's authority to reject for filing any submission that the Clerk's office cannot manage in the regular execution of its duties because that document is not clear, not properly filed, or otherwise noncompliant with legal filing requirements.

(REPLY APP. N)
REPLY APPENDIX 4 p. 9

4. Cross-Motions: A cross-motion is a motion made by the responding party against the original movant. A cross-motion requests that the Court rule in favor of the party filing the cross-motion (the "cross-movant") on a basis similar to that requested by the original movant. A cross-motion must be filed with the Clerk and served on all parties not more than **TWENTY-ONE (21) days** after service of the motion, unless otherwise ordered by the Court. Any papers responding to the cross-motion must be filed with the Clerk and served on all parties not more than **SEVEN (7) DAYS** after service of the cross-motion/opposition to motion. See L.R. 7.1(c).

CHAPTER XII – ENDING A CASE BEFORE TRIAL

Today, most cases never actually go to trial. There are various ways that a case can end before trial, some of the most common of which are discussed below.

A. SUA SPONTE DISMISSAL BY THE COURT

If a plaintiff has filed an application to proceed in forma pauperis, Title 28, section 1915 of the United States Code governs his or her case. 28 U.S.C. § 1915(e) states that a Judge shall dismiss a case if at any time the Court determines that: (1) the plaintiff's allegations of poverty are untrue, (2) the action is frivolous or malicious, (3) the plaintiff has failed to state a claim upon which relief can be granted, or (4) the plaintiff is seeking monetary relief against a defendant who is immune from such relief.

The Court also has the inherent power to determine that a claim is not frivolous before permitting a plaintiff to proceed, and may *sua sponte* dismiss a *pro se* complaint which is frivolous or fails to state a claim even if the filing fee has been paid. See *Fitzgerald v. First East*

(REPLY APP. 0)
REPLY APPENDIX P. 10.
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