

No. _____

21-5521

IN THE

SUPREME COURT OF THE UNITED STATES

Antonia W. Shields, PETITIONER

v.

United States, RESPONDENT

ORIGINAL

On Petition for a Writ of Certiorari to

The United States court of appeals for the Second Circuit

Petition for Writ of Certiorari

FILED
AUG 27 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Antonia W. Shields, pro se
Antonia W. Shields, pro se *August 27, 2021*

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QUESTION PRESENTED

**Under U. S. Constitution Article III, section 2
and U. S. Constitution Article VI.,
is the Government sovereignly immune to duty
in U. S. Constitution Amendment I. for the fair
right of free U. S. citizens, rich and poor,
to petition the Government for redress of
subject-matter grievances?**

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

***Shields v. United States*, No. 20-cv-152 (GTS/CFH) U.S. district court for the Northern District of New York (NDNY)**
Amended Judgment entered July 26, 2021.

***Shields v. United States*, No. 20-3427 U.S. court of appeals for the Second Circuit. Summary Order and Judgment entered June 4, 2021.**

***Shields v. United States*, No. 20-6860*, U. S. Supreme Court Order, entered March 8, 2021. (petition for writ of certiorari before Judgment denial).**

(*This case may continue under this number, but Shields does not know, because she is *pro se.*)

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

Petitioner respectfully prays to the above that a writ of certiorari issue to review
the judgment below.

OPINIONS BELOW

For this case from the federal courts:

The opinion of the United States court of appeals appears at Appendices
A, B, and E to the petition, and it is unknown to *pro se* Shields if any opinion
is reported.

The opinion of the United States district court NDNY Civil Division 1 -
Albany appears at Appendices C, F, G, and H to the petition, and it is
unknown to *pro se* Shields if any opinion is reported.

The opinion of the United States Supreme Court, petition for writ of
certiorari before Judgment denial, is reported by letter and appears at
Appendix D.

JURISDICTION

For this case from the federal courts:

The date of entry of the Summary Order and Judgment of the United States

Court of Appeals for the Second Circuit who decided this case was June 4, 2021.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL, STATUTORY PROVISIONS, RULES INVOLVED

U. S. Const. pmbL.

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. art. III, § 2.

The judicial Power shall extend to

all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;-to all Cases affecting Ambassadors, other public Ministers and Consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a Party;-to Controversies between two or more States;-[between a State and Citizens of another State;-]* between Citizens of different States,- between Citizens of the same State claiming Lands under Grants of different States, [and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.]*

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

U.S. Const. art. III, § 2.

*Changed by the Eleventh Amendment

U.S. Const. art. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several states, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

U.S. Const. art. VI.

U.S. Const. amend. I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

28 U. S. C. § 453

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. § 453

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. § 1331

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

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

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

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

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

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

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

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

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

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

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection(b), the court may direct payment by the United States of the expenses of

(1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court;

(2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and

(3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases.

Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

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

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

(A) the allegation of poverty is untrue; or

(B) the action or appeal

(i) is frivolous or malicious;

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

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

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

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

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

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

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

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

28 U.S.C. § 1915.

28 U.S.C. § 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. (c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

28 U.S.C. § 2072

Fed. R. Civ. P. 4(c)(3) "Summons. Service. by a Marshal or Someone Specially Appointed. At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma paupers under 28 U. S. C. §1915 or as a seaman under 28 U.S.C. §1916.

Fed. R. Civ. P. 4(c)(3)

**U.S. district court NNDNY Local Rule (2020) 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. (2020) 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. (2020) 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.

**U.S. district court NDNY Local Rule
(2020) 5.4**

STATEMENT OF THE CASE

This is *not* a Rule 12.6 notification that the petitioner believes the United States has no interest in the outcome of the petition.

Free U. S. citizens, rich and poor, (Shields is of these people) have fair right to petition the Government for a redress of grievances under U. S. Constitution Amendment I., protected, here, by both U. S. Const. Article VI. And Article III, § 2.

This civil action addresses free U. S. citizens, rich and poor (Shields is of these people).

This civil action addresses fair right to petition the Government for a redress of grievances under U. S. Constitution Amendment I. :

Shields's complaint,

questions the fair right to petition,

[(complaint p. 1 of 1) questions equal right to petition]

the Government

[(complaint p. 1 of 1) says "the federal government"]

for the people's right

[(complaint p. 1 of 1) compares only free U. S. citizens, rich and poor, (and, Shields is similarly situated because she is a free U. S. citizen.)]

for a redress

[(complaint p. 5 of 5) for relief]

of grievances

[(complaint pp. 2 of 5 through 5 of 5) statement of claim for which relief may be granted].

Shields's complaint is a constitutional question about fair right to petition, not raised for the first time on appeal. (Appendix M).

And, governmental immunity, to this civil action, was not raised for the first time on appeal, as well [(complaint p. 5 of 5) the claim for which relief may be granted (in this civil action - fair right to petition) may need to be separated from governmental immunity (this petition for writ of certiorari- see question presented on page viii. of this document, before this Court, is “the may need to be separated” issue)]. (Appendix M).

Governmental immunity, exempting its duty to the First Amendment's fair right of the people to petition the Government for redress of subject-matter grievances, is for the United States, defendant-appellee-respondent, to claim sovereign immunity over this action's subject-matter jurisdiction, over this constitutional matter jurisdiction. The United States wrote to the Clerk of the U. S. court of appeals for the Second Circuit that they were never made party, not served properly. (Appendix I). Yet, Fed. R. Civ. P. 4(c)(3) says, Summons...Service... by a Marshal...the (U. S. district court NDNY) must so order if the plaintiff is authorized to proceed *in forma pauperis*, under 28 U. S. C. § 1915. (Appendix J shows IFP status)On December 10, 2020, the U. S. Court of appeals for the Second Circuit Ordered the United States, defendant-appellee, giving further direction. (Appendix E). And, before January 14, 2021, the U. S. Supreme Court placed Shields's before-judgment petition for writ of certiorari on the U. S. Supreme Court docket.

But, on February 12, 2021, the Government responded to the action by filing a waiver to waive its right to file a response to the petition, unless the Supreme Court requested it. (please note that the New York State address the Government used on this waiver for Shields is misspelled - it has Shields's residential city to be Sarasota Springs, but Shields's residential city is Saratoga Springs.) On March 8, 2021, the U. S. Supreme Court denied the before-judgement petition for writ of certiorari. (Appendix D). Yet, the United States does have interest in the outcome of the petition.

The U. S. court of appeals for the Second Circuit entered Summary Order and Judgment on June 4, 2021. (Appendix A). Its Mandate entered July 26, 2021 for the U. S. district court NDNY to amend its judgment to be without prejudice, but to otherwise accept judgment. [(Appendix B): from (Appendix F) based on (Appendix G) to (Appendix C)]. A result for the remand was the Report-Recommendation in its entirety, except without prejudice. (Appendix H).

In the court of the first instance in this civil action, Shields's did submit the question page, again, through timely objections through paper, mailed USPS as is customary. (Shields was an essential worker during the intense April 2020 to May 2020 covid pandemic in New York State, when Shields was required to report, while most New Yorkers were required to stay at home without exiting, except for essential errands.) Those Shields's Objections were: (Appendix K). It is unknown to Shields why the U. S. district court assigned cause 42 U. S. C. § 1983 to the U. S. district court General Docket (Appendix L); this is because Shields never asked for it, Shields's complaint's papers never requested it, so, Shields objected to it in Objections (Appendix K).

And, the Objections' page 6 of 7 invoked may show U. S. Const. art. III, § 2 and alleged fact is "The judicial Power shall extend... - to Controversies to which United States shall be a party...." (Appendix K). The U. S. court of appeals for the Second Circuit accepted the federal district court NDNY Clerk's Certification showing, at the end of the page, "...Motion for leave to proceed *in forma pauperis* was granted...." (Appendix J). This petition for writ of certiorari, with its motion to proceed *in forma pauperis*, is timely, postmarked within 90 days of June 4, 2021. This is an after- Second Circuit judgment petition for writ of certiorari. Shields used rules and guidelines on paper that this Court mailed to her on August 6, 2021 to prepare this document.

No law apart from prisoner statute has the Government made for free U. S. citizens, rich and poor, to fairly petition the Government for a redress of grievances; such is Shields's experience in U. S. district court NDNY - she had no other option, unlike other free U. S. citizens rich, but to file to proceed through prisoner statute so her complaint may proceed in federal court. Proceeding through *in forma pauperis* is proceeding through prisoner statute. 28 U. S. C. § 1915 is "Proceedings *in forma pauperis*." Not having equal opportunity, compared to some other free U. S. citizens, to the right of petition apart from having to apply to proceed via prisoner statute, is unfair; Shields's right to petition, here, is not fair.

This Statement of the Case is to the best of Shields's ability as *pro se* petitioner, who is not an attorney, but who is a free U. S. citizen, who has never been incarcerated and who has never been detained in any facility, but who has always been a free United States non-prisoner citizen.

REASONS TO GRANT THE PETITION

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. pmbl.

The people ordained and established the U. S. Constitution, and the Government has authorized all words inside it.

The United States Constitution protects the people of the U. S. Constitution to petition the Government for a redress of grievances so a complaint may proceed. This right is found inside U. S. Constitution Amendment I. Not to protect the fair right of the people to petition the Government for a redress of grievances, but to claim Government immunity to the fair right of the people to petition the Government for a redress of grievances, may be to reduce this right of the people.

The word, “abridge” is defined by *Black’s Law Dictionary*, 8th edition, on page 6 : “1. To reduce or diminish....”

And, to require the people to obtain a waiver to Government immunity may not to protect the people of the United States, here either. This means one must go outside U. S. Constitution Amendment I. to beg a waiver, allowing the Government to consent to not be exempt from duty inside the right of the people to petition the Government for a redress of grievances, so a complaint may proceed. *Black’s Law*

Dictionary, 8th edition, defines, on page 765, "immunity" to be "1. Any exemption from a duty...." But, the Government consented to not be exempt from duty to the Constitution over two centuries ago. On December 15, 1791, the United States Government consented to being present inside U. S. Constitution Amendment I. right to petition, ratified effective that day. The United States, the Government has interest in the outcome of the petition. The people need not to seek any waiver from the Government who may have no exemption from duty to be present inside U. S. Constitution Amendment I. right to petition. The Government may be presumed constitutionally not immune here.

When U. S. Constitution Amendment 1. speaks, the people of the United States listen. For example, the people of the United States applauded the decision in *New York Times Co. v. United States* (1971); here, "the Government," was actively engaged, responding to the case. Here, the New York Times was petitioner, and the United States was respondent. And, here, the U.S. Constitution Amendment I. role of "the Government" was not one with sovereign immunity.

Shields contends that the right of the people to petition "the Government" for a redress of grievances, without "the Government" being immune, is as important as the right of the press; the right of the people to petition "the Government" for a redress of grievances, without "the Government" being immune, is not less important than the right of the press.

When the United States, as respondent, is silent or exempts itself from duty, the people of the United States put on hearing aids. For example, is it the President's prerogative to do nothing if the Constitution commands something within the outer perimeter of the duties of the President? Or, is the President immune from duties inside the U.S. Constitution, superior words presumed clear from constitutional immunity?

In *Nixon v. Fitzgerald* (1982), the President or Former President has absolute immunity from duties of the President within the outer perimeter. Yet, U.S. Const. art. VI. states, "... all executive ... Officers, ... of the United States ... shall be bound by Oath or Affirmation, to support this Constitution...." Shields asserts that one of the duties within the President's outer perimeter not exempt from immunity is the duty to steadfastly uphold all words in the U. S. Constitution.

When the citizens of the United States see reduction in the people's right to petition the Government for a redress of grievances, the people of the United States put eyeglasses on to scrutinize. For example, Congress passed prisoner statute, 28 U. S. C. § 1915. Afterwards, some free U. S. citizens started being required to go through the prisoner statute so their complaint may proceed because someone else did it; this unfair right to petition the Government for a redress of grievances became an alleged glaring reduction in fairness of U. S. Constitution Amendment I. right to petition for free citizens, rich and poor - the opportunity for fair right to petition apart from prisoner statute became not equitable. Inequality reduces balance in the scales of justice. Stare decisis appears wrong here.

To claim exemption from duty inside U. S. Constitution Amendment I. text, may not be fair for the Government to do. And, the Government may not be able to waive any right to respond due to prior Government consent to be situated inside the First Amendment fair right to petition over 229 years ago.

For the above reasons there is national importance of having this Court decide the questions involved.

Specific to Shields's action, Shields does not agree with the U. S. court of appeals Second Circuit decision to dismiss the case as it is. This is because Shields's has asserted many alleged facts in her complaint substantiating the subject-matter (fair right to petition) that may not be barred by sovereign immunity denying its jurisdiction - the complaint shows Shields may not have failed to state a claim, giving numerous alleged facts about the fair right to petition subject-matter. Shields may have subject-matter jurisdiction, with United States defendant, here, protected under U. S. Const. art. III, § 2. This subject-matter is fair right to petition for free U. S. citizens, rich and poor, to seek redress of grievances from the Government, the United States, defendant.

And, to state a cause of action, without failure, is to have sufficient alleged facts to maintain the claim. At the same time, a complaint must be plain and brief. Shields's complaint, (Appendix M), naming the federal government, alleged that inequity (unfairness) exists in the law for the right of free U. S. citizens, rich and poor, to petition the Government for a redress of grievances, so a complaint may proceed in federal court. The complaint alleged this is a civil action. The

complaint alleged this is a constitutional rights complaint. The complaint alleged that the unfairness is that free U. S. citizens, rich and poor, do not have equal opportunity to right of petition apart from prisoner statute, 28 U. S. C. § 1915 governed, for Shields, by U. S. District court NDNY Local Rule (2020) 5.4. The complaint alleged that Shields had been determined to be poor. The complaint alleged this unfair treatment in existing law toward U. S. citizens rich and poor is not fair right, not consistent with a promise, Judicial Oath in 28 U. S. C. § 453. [A promise in Judicial Oath, here, is to do equal right to the poor and to the rich, under the Constitution and the laws of the United States, with U.S. Constitution, supreme Law of the Land. (U. S. Const. art. VI.)] The complaint alleged that this unequal treatment for free U. S. citizens, rich and poor is not fair right to petition, apart from prisoner statute; violates security of "Blessings of Liberty" under the United States Constitution - it is not fair. [Shields knows that "Liberty" is freedom from arbitrary restraint, as defined in Black's Law Dictionary, 8th edition on page 937, and that arbitrariness is based upon prejudice.] The complaint alleges harm to Shields, constitutional violation is harm. The complaint alleges Shields has always been a free U. S. citizen. The complaint alleges that Shields is no prisoner, that Shields has never been a prisoner. The complaint alleges harm, not only to Shields, but also to the U. S. Constitution, constitutional violation is harm, she was treated unfairly. The complaint alleges Shields had no equal right in violation of the equal right clause of United States law 28 U. S. C. § 453, to pursue fair right to petition. [the subject-matter is fair right to petition] Apart from prisoner statute, 28 U. S. C. § 1915 - no fair law exists for free U. S. citizens, rich and poor,

to pursue fair right to petition. The complaint on page 5 of 5 alleges, the claim for which relief may be granted may be needed to be separated from governmental immunity. So, Shields believes that she has established adequate alleged facts to maintain the claim. [In terms of government immunity blocking subject-matter jurisdiction under U. S. Const. art. III, § 2, the fair right to petition may be protected for the people against the Government being immune from its duty to perform inside the First Amendment. Because U. S. Constitution Amendment I. fair right to petition includes the Government, situated there for over two centuries, Shields asserts that the United States, as party, has duty to perform, duty of care; it gave its consent to not be immune to constitutional text, time ago.]

With regard to immunity, the Government owes Shields a duty of care not to exempt itself from duty to its presence in First Amendment right to petition, not to allegedly ignore both U. S. Const. art. VI. And art. III, § 2 relying only on court direction to perform its duty to respond.

The Government breached that duty of care; it asserted its duty has immunity to the fair right of the people (Shields) to petition the Government for a redress of subject-matter grievances.

Shields suffered injury; the injury is alleged constitutional violation, Shields's fair right to petition the Government for a redress of grievances, abridging Amendment I., reducing fairness.

The alleged constitutional violation was a result of the Government's duty to be responsive and not to claim immunity to Shields's fair right to petition.

The district court NDNY chose 42 U. S. C. § 1983 to put on the General

Docket, but Shields had not requested it in her papers filed February 12, 2020, entered the next day. Shields tried to Object to it in her timely Objections [Appendix K] to the April 30, 2020 Report-Recommendation and Order. Shields does appreciate the fact that the U. S. district court filed her objections quickly. Shields is *pro se*.

But, U. S. district court NDNY Local Rule (2020) 5.4 governs Shields's *in forma pauperis* proceedings. Inside this Local Rule (2020) 5.4 is the sentence, "Prior to the Marshal serving process pursuant to 28 U. S. C. § 1915(d) and L. R. (2020 Local Rule) 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." So, reviewing all actions pursuant to 28 U. S. C. §1915(g) is to review:

" (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.

Reading Shields's action pursuant to 28 U. S. C. §1915(g) and determining *sua sponte* dismissal is appropriate is to call free U. S. citizen Shields a "prisoner" when she has never been "prisoner" and to say Shields has been "incarcerated or detained in any facility," when she has never been incarcerated and never been

detained in any facility. This treatment is demeaning to Shields. To allegedly falsely pass through 28 U. S. C. §1915(g) review saying Shields is “prisoner” and has been “incarcerated or detained in any facility” in order to *sua sponte* dismiss her case, is wrong; it is harmful; it injures Shields. Shields has always been free.

Such treatment is not equal to free U. S. citizens, rich and poor, so the right to petition is diminished. Such treatment is not equal for Shields, compared to other U. S. citizens, rich, - her right to petition is reduced through unfairness.

And, Shields questioned U. S. district court Local Rule (2020)5.4 on the face of her complaint, about the fair right to petition the Government for a redress of grievances so her complaint may proceed. (Appendix M). For, the district court’s Local Rule (2020) 5.4 governs *in forma pauperis* proceedings requiring whether *sua sponte* dismissal is appropriate [required before court-directing the Marshal to serve (the defendant, United States)]. But, Shields does not understand how *sua sponte* dismissal could ever be appropriate for her, or for any other free U. S. citizen like Shields who has never been a prisoner, who has never been incarcerated, who has never been detained in any facility, but who is similarly situated.

The United States cried, “Foul!,” saying, “...we will not be participating in the captioned civil appeal, absent some further direction from the (U. S. court of appeals for the Second Circuit) Court...” (Appendix F). So, the United States did receive further direction from the U. S. court of appeals for the Second Circuit through an Order dated December 10, 2020, acknowledging the United States should participate in its role as defendant, giving an example. (Appendix E).

Further, with regard to the United States role within the right to petition the Government for a redress of grievances, the Summary Order on June 4, 2021 chose to review anew “the district court’s *sua sponte* dismissal of a complaint under 28 U. S. C. §1915(e)(2)(B) and its determination of its subject matter jurisdiction, including whether sovereign immunity exists.”(and failure to state a claim on which relief may be granted) (Appendix A).

Shields does *not* agree with the following findings in the Summary Order:

1. Summary Order finding: “The district court correctly held that sovereign immunity deprived it of subject matter jurisdiction over Shields’s complaint.” (Shields’s position is that the district court did not correctly hold that sovereign immunity deprived it of subject matter jurisdiction over Shields’s complaint. The United States may not be immune to First Amendment fair right to petition.)

2. Summary Order finding: ““The United States, as sovereign, is immune from suit unless it waives immunity and consents to be sued.” citation.’ (Shields’s position is that the United States does not have immunity from suit in this case and there is neither need to waive any immunity, nor need to ask the United States for consent to be sued. The United States has authority, but the U. S. Constitution is supreme Law of the Land under U. S. Const. art. VI., and “the Government” in Amend. I. fair right to petition may be presumed constitutionally not immune.)

3. Summary Order finding: ’“...(T)he plaintiff has a burden of showing that subject matter jurisdiction exists.” citation...never alleged in her complaint that the United States waived sovereign immunity and consented to be sued

pursuant to the statutes under which she asserted claims (28 U. S. C. §§ 453 and 1915)...failed to establish subject matter jurisdiction which requires “a clear statement from the United States waiving sovereign immunity” citation.

[[Shields’s position is that Shields showed that subject matter jurisdiction exists, presenting a federal question on page 1 of 1 in the complaint, consistent with Congressional statute 28 U. S. C. § 1331, under U. S. Const. art. VI. and U. S. Const.art. III, §2, asking about the fair right for all free U. S. citizens to petition the Government for a redress of grievances, so a complaint may proceed in federal court. Shields may need not seek any consent from the United States to waive the Government’s immunity because U. S. Constitutional law ratified, effective December 15, 1791, shows the United States may have consented to be present inside the role of participant for the right of the people to petition the Government for a redress of grievances, presumed constitutional duty, not immune from it in the first place.]]

And, Shields’s complaint questions fairness in use of, not only 28 U. S. C. §§ 453 and 1915 statutes, but also questions fairness in U. S. district court NDNY Local Rule (2020) 5.4 - [this 2020 version use in governing *in forma pauperis* proceedings includes 28 U. S. C. 1915(g) review prior to *sua sponte* dismissal. Shields asserts unfairness, the requiring of alleged wrong 28 U. S. C. §1915(g) review for Shields, reduces her First Amendment right to petition because it is unfair, to say, for e.g. Shields is incarcerated when she has never been and to say

Shields is detained in a facility when she has never been - this unfair process has happened more years than just 2020 matters for Shields and for other free U. S. citizens, similarly situated. It is alleged plainly wrong. Shields is asking constitutional question meeting Congressional statute 28 U. S. C. § 1331 and U. S. Const. art. III, §2 under U. S. Const. art. VI. by this being a civil action arising under the Constitution and laws of the United States, pursuant to it.]

4. Summary Order finding: “decline...sovereign immunity violates her right to petition the government under the First Amendment ... which she raises for the first time on appeal.” [Shields questioned fair right to petition the Government for a redress of grievances in the complaint. (Appendix M) Shields’s position is that fair right to petition is U. S. Constitution Amendment I. right to petition, was not raised the first time on appeal. The reason Shields wrote in her complaint on page 5 of 5, “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...” is that Shields believes that the Government is not immune to its presence in U. S. Constitution Amendment I right to petition.]

5. On page 2 of the U. S. Court of appeals for the Second Circuit Summary Order are the words, “...The district court *sua sponte* dismissed the complaint

with prejudice under 28 U. S. C. §1915(e)(2)(B), holding that it was barred by sovereign immunity and failed to state a claim....” (Appendix. A).

A problem with accepting the Second Circuit’s Summary Order and Judgment is that the lower court’s Report-Recommendations are adopted in its entirety and the case is dismissed. The Report-Recommendation supports that under the Constitution, the United States Government possesses absolute immunity from suit without its consent, referencing multiple cases. (App. J). [But, Shields, plaintiff, on page 5 of 5 in her complaint said, “ ...claim for which relief may be granted may need to be separated from government immunity....” And,

Shields supports that the United States may not be immune over fair right to petition subject-matter jurisdiction about Shields’s presented claims, in her complaint, that may allow subject-matter jurisdiction and that may allow no failure to state a claim on which relief may be granted, because Shields did state a claim on which relief may be granted: as 28 U. S. C. § 2072 relief is respectfully requested in the complaint on page 5 of 5. (Appendix M).

For the United States not to participate as defendant and/or appellee and/or respondent is an alleged reduction in Shields’s fair right to petition under the First Amendment to the U. S. Constitution, under U. S. Const. art VI. and U. S. Const. Art. III, §2, but the United States still has interest in the outcome of this the case.

The United States is neither supreme over U. S. Constitution Article VI, nor supreme over U. S. Constitution Article III, section 2.

And, any exception to the U. S. Constitution is not the supreme Law of the Land.

(U. S. Const. art. VI.) U. S. Constitution art. III. sect. 2. says, "the judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution...."

This is a case in law and equity arising under the U. S. Constitution and laws of the United States made in pursuance thereof.

And, Chief Justice Marshall, in *Marbury vs. Madison* (1803), wrote a decision establishing Supreme Court power over evaluation of constitutionality.

The U. S. court of appeals for the Second Circuit appears to have decided a constitutional question about whether or not the Government is immune from Shields's fair right to petition the Government for a redress of grievances so her complaint may proceed, has decided an important question of constitutional and federal law that has not been, but should be settled by this Court.

CONCLUSION

Considering the above, the petition for a writ of certiorari should be granted, please.

Respectfully submitted,

Alfonso W. Fuentes, pro se
Date: August 27, 2021