INDEX TO APPENDICES for Petition for Writ of Certiorari

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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 4th day of June, two thousand twenty-one.

PRESENT: GUIDO CALABRESI,
WILLIAM J. NARDINI,
Circuit Judges,
GARY S. KATZMANN,
Judge.[*]

Antonia W. Shields,
Plaintiff-Appellant,

v. No. 20-3427

United States,
Defendant-Appellee.

For Plaintiff-Appellant: Antonia W. Shields, *pro se,* Saratoga Springs, NY

For Defendant-Appellee: No appearance

[*] Judge Gary S. Katzmann, of the United States Court of International Trade, sitting by designation.

APPENDIX A.

Appeal from a judgment of the United States District Court for the Northern District of New York (Glenn T. Suddaby, *C.J.*; Christian F. Hummel, *M.J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**, but the case is **REMANDED** for the court to amend its judgment and enter dismissal without prejudice.

Antonia W. Shields, *pro se*, sued the United States, asserting that the district court's dismissal of a prior lawsuit under 28 U.S.C. § 1915 and a local rule violated 28 U.S.C. § 453 because the court applied a higher standard of review to her allegations based on her *in forma pauperis* status and mislabeled her a "prisoner." 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. The court denied leave to amend as futile. Shields now appeals the district court's judgment and moves for a stay of this Court's mandate so she can file a petition for a writ of certiorari in the U.S. Supreme Court. We assume the reader's familiarity with the case.

We review *de novo* a 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. *Zaleski v. Burns*, 606 F.3d 51, 52 (2d Cir. 2010) (dismissal of complaint); *Filler v. Hanvit Bank*, 378 F.3d 213, 216 (2d Cir. 2004) (subject matter jurisdiction determination). A district court must construe *pro se* filings "liberally

and interpret them 'to raise the strongest arguments that they suggest.'" *Kirkland v. Cablevision Sys.*, 760 F.3d 223, 224 (2d Cir. 2014) (quoting *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir. 1994)).

The district court correctly held that sovereign immunity deprived it of subject matter jurisdiction over Shields's complaint. We begin with two points of law: first, "[t]he United States, as sovereign, is immune from suit unless it waives immunity and consents to be sued," *Cooke v. United States*, 918 F.3d 77, 81 (2d Cir. 2019); and second, the plaintiff has the burden of showing that subject matter jurisdiction exists, *Lunney v. United States*, 319 F.3d 550, 554 (2d Cir. 2003). Shields 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). Mere references to sovereign immunity in her complaint and in her objections to the magistrate's report and recommendation failed to establish subject matter jurisdiction, which requires "a clear statement from the United States waiving sovereign immunity." *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003). Shields's argument on appeal—that the district court had jurisdiction because she raised a federal question—is also unavailing. While she may have raised a federal question, she asserted her claim against the federal government, which is immune from suit and has not waived its immunity. We decline to consider Shields's other arguments on sovereign immunity—that 28

U.S.C. § 1346(a)(2) waives sovereign immunity here and that sovereign immunity violates her right to petition the government under the First Amendment—both of which she raises for the first time on appeal. *See Greene v. United States*, 13 F.3d 577, 586 (2d Cir. 1994).[2]

However, while the district court properly held that it lacked subject matter jurisdiction over Shields's complaint, it erred in dismissing the complaint with prejudice. Dismissals for lack of subject matter jurisdiction must be without prejudice. *Katz v. Donna Karan Co., L.L.C.*, 872 F.3d 114, 121 (2d Cir. 2017).

We deem abandoned any argument that the district court erred in denying Shields leave to amend her complaint because she does not raise this point in her appellate brief. *See LoSacco v. City of Middletown*, 71 F.3d 88, 92–93 (2d Cir. 1995).

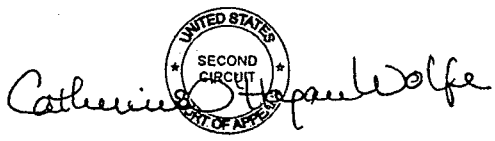
Finally, we deny Shields's motion to stay our mandate pending her anticipated petition to the Supreme Court for a writ of certiorari on the question of whether 28 U.S.C. § 1915(g) violates the First Amendment. Federal Rule of Appellate Procedure 41(d)(1) requires such a motion to "show that the petition would present a substantial question and that there is good cause for a stay." Given the lack of subject matter jurisdiction over her complaint, her failure to raise this question before the district court, and the fact that her claims are undeveloped, we hold that Shields fails to meet her

[2] We likewise do not consider Shields's argument raised for the first time on appeal that the district court violated her equal protection rights when it dismissed her lawsuit under 28 U.S.C. § 1915.

burden for such relief.

We have considered Shields's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court, **REMAND** for entry of an amended judgment dismissing the case without prejudice, and **DENY** Shields's motion for a stay.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

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 4th day of June, two thousand twenty-one.

PRESENT: GUIDO CALABRESI,
WILLIAM J. NARDINI,
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GARY S. KATZMANN,
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Plaintiff-Appellant,

v. No. 20-3427

United States,
Defendant-Appellee.

For Plaintiff-Appellant: Antonia W. Shields, *pro se,* Saratoga Springs, NY

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MANDATE ISSUED ON 07/26/2021

APPENDIX B.

Appeal from a judgment of the United States District Court for the Northern District of New York (Glenn T. Suddaby, *C.J.*; Christian F. Hummel, *M.J.*).

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Finally, we deny Shields's motion to stay our mandate pending her anticipated petition to the Supreme Court for a writ of certiorari on the question of whether 28 U.S.C. § 1915(g) violates the First Amendment. Federal Rule of Appellate Procedure 41(d)(1) requires such a motion to "show that the petition would present a substantial question and that there is good cause for a stay." Given the lack of subject matter jurisdiction over her complaint, her failure to raise this question before the district court, and the fact that her claims are undeveloped, we hold that Shields fails to meet her

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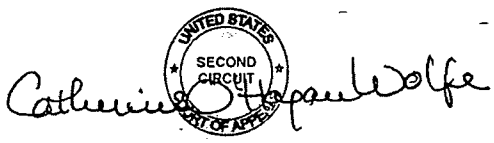
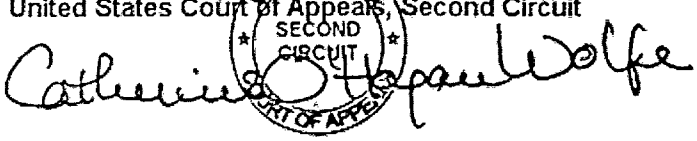
We have considered Shields's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court, **REMAND** for entry of an amended judgment dismissing the case without prejudice, and **DENY** Shields's motion for a stay.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit



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

AMENDED 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 Mandate issued on July 26, 2021 (Dkt. No. 17) by the United States Court of Appeals for the Second Circuit, Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 5) is ACCEPTED and ADOPTED in its entirety; and Plaintiff's Complaint (Dkt. No. 1) is DISMISSED **without prejudice**. The Clerk is directed to CLOSE this action.

All of the above pursuant to the Mandate issued on July 26, 2021 by the United States Court of Appeals for the Second Circuit. Dkt. No. 17.

DATED: July 26, 2021

John Domurad
Clerk of Court

s/ Shelly Muller
Shelly Muller
Courtroom Deputy Clerk

APPENDIX C.

Federal Rules of Appellate Procedure
Rule 4. Appeal as of Right

(a) Appeal in a Civil Case.

1. (1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;
(ii) a United States agency;
(iii) a United States officer or employee sued in an official capacity; or
(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58 (a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79 (a); or

(ii) if Federal Rule of Civil Procedure 58 (a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58 (a) does not affect the validity of an appeal from that judgment or order.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

March 8, 2021

Ms. Antonia W. Shields
P.O. Box 195
Saratoga Springs, NY 12866

Re: Antonia W. Shields
v. United States
No. 20-6860

Dear Ms. Shields:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari before judgment is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

APPENDIX D.

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.

Antonia W. Shields,

Plaintiff - Appellant,

v.

United States,

Defendant - Appellee.

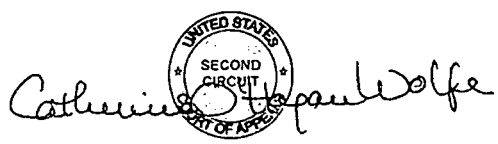
ORDER

Docket No. 20-3427

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



APPENDIX E.

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 Domurad
Clerk of Court

s/ Shelly Muller
Shelly Muller
Courtroom Deputy Clerk

APPENDIX F.

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(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;
(ii) a United States agency;
(iii) a United States officer or employee sued in an official capacity; or
(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

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(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

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(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

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• the judgment or order is set forth on a separate document, or

• 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58 (a) does not affect the validity of an appeal from that judgment or order.

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 G.

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

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[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 where 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.").

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, C.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

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[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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTONIA W. SHIELDS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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

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.

APPENDIX H.

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. Analysis[3]

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 litigators, 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 understate 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).

United States Department of Justice

United States Attorney
Northern District of New York

445 Broadway, Room 218
James T. Foley U.S. Courthouse
Albany, New York 12207-2924

Tel.: (518) 431-0247
Fax: (518) 431-0386

October 21, 2020

Hon. Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals
for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Shields v. United States*
Docket No. 20-3427

Dear Ms. Wolfe:

The undersigned Assistant United States Attorney has filed a limited notice of appearance on behalf of the United States (the "Federal Defendant") in the above-captioned civil appeal, for the limited purpose of being kept electronically apprised of events noted on the docket. *See Valentin v. Dinkins*, 121 F.3d 72, 75 n.2 (2d Cir. 1997) (Corporation Counsel's participation in appeal on behalf of a defendant-appellee who had not been served with process did not "constitute a waiver of the service issue, or a general appearance" by that defendant-appellee).

The Federal Defendant was not served with the complaint, and did not appear in the district court, before the district court *sua sponte* dismissed the action filed by *pro se* plaintiff-appellant. Because it was never made parties to the district court action, the Federal Defendant is not properly parties to this action. *See Boddie v. Alexander*, 365 F. App'x 438, 439 n.1 (2d Cir. 2009); *Petway v. N.Y. City Transit Auth.*, 405 F. App'x 66, 66 n.2 (2d Cir. 2011); *Chavis v. Chappius*, 618 F.3d 162, 166-67 (2d Cir. 2010) ("Because Defendant was never served, it is not parties to this appeal").

Given that there was no federal "party" below, please be advised that we will not be participating in the captioned civil appeal, absent some further direction from the Court.

APPENDIX I.

Thank you for your attention to this matter.

Very truly yours,

ANTOINETTE T. BACON
Acting United States Attorney

s/ *Karen Folster Lesperance*
By: Karen Folster Lesperance
Assistant United States Attorney

cc: Antonia W. Shields, *pro se*
P.O. Box 195
Saratoga Springs, NY 12866

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 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
Documents Appealed: 10 & 11

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

Counsel: Retained ___ Pro Se X

Time Status: Timely X 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 J.

Civil Case Number 1:20-cv-00152-GTS-CFH

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 OBJECTIONS TO REPORT-RECOMMENDATION AND ORDER filed April 30, 2020

THIS IS: OBJECTIONS TO REPORT-RECOMMENDATION and ORDER

Antonia W. Shields
Signature

May 5, 2020
May 5, 2020 (Please note: this is an unusual time when the Court building is closed to the public.)

Antonia W. Shields, *pro se*, not an attorney

PO Box 195

Saratoga Springs, NY 12866

315.368.4415

cover

APPENDIX K.

Original 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 ?

This party respectfully requests modification of that which is contrary to federal law in the Report-Recommendation Ordered. This plaintiff gave no consent to a Magistrate Judgship in this case. Nor, to this plaintiff's knowledge, a District Judge has not received issue of a Report-Recommendation from Magistrate Judgship.. When such happens, please mail an updated paper copy, as is customary, of the Docket Sheet, to this plaintiff as soon as practicable.

The Magistrate Judgship Report-Recommendation was served by mail on paper. This is an unusual time, as the entry date of the Report-Recommendation is unknown to Shields because no one has sent a Docket Sheet with this information to Shields. Please send an updated Docket Sheet only after these unattached (separate) documents in this mailing are entered, noting filing date and entry date.

Thank you.

Further, I, Shields, am *pro se*, and I am not an attorney.

On April 30, 2020, Federal district court (civil) Report-Recommendation Ordered for the official record that 28 U.S.C. § 1915 is true for Shields. See their legal standard. And, truth has merit.

But, 28 U.S.C. § 1915 has never been true for Shields because Shields has always been a free U.S. Citizen, and

Shields is neither a prisoner, nor

has Shields ever been a prisoner.

Yet, the requirement that free U.S. Citizen Shields be placed under 28 U.S.C. § 1915 conflicts with Federal Law 28 U.S.C. § 453. Such conflict is because there is mandated truth to federal judgship. No other.

So, precedent is wrong when judgship conflicts with federal law. Correction may be.

Or, a judge may certainly apologize for falsehood claimed. And, the accuser, the judge, may Order the wrong caused by such mishap entered changed. If there is no proper filing, then there is no action.

Now, previously, and into the future, please do not decide and provide judgment to any free U.S. Citizens under 28 U.S.C. § 1915 because to do so is false and not within Federal Judgship Oath.

U.S. district court judgship is now through the Report-Recommendation Ordered solely based upon 28 U.S.C. § 1915 (that

this plaintiff finds to be clearly contrary to federal law: 28 U.S.C. § 453 - truth is judgship) such Report-Recommendation Ordered is now causing harm to free U.S. Citizen Shields, plaintiff.

All federal law judgship is 28 U.S.C. § 453 truth to the U.S. Constitution and for whom it stands.

Basing Report-Recommendation Ordered upon true 28 U.S.C. § 1915 (for any free U.S. Citizen) is all federal law judgeship.

Basing Report-Recommendation Ordered upon true 28 U.S.C. § 1915 (for any free U.S. Citizen) is 28 U.S.C. § 453 truth to the U.S. Constitution and for whom it stands.

And,

Not basing Report-Recommendation Ordered upon the truth (28 U.S.C. § 1915 is wrong and contrary to any free U.S. Citizen) is not federal law 28 U.S.C. § 453 truth to the U.S. Constitution and for whom it stands.

Ordered upon the truth (28 U.S.C. § 1915 is wrong and contrary to any free U.S. Citizen).

No true federal law judgship is not federal law 28 U.S.C. § 453 truth to the U.S. Constitution and for whom it stands.

By Amendment X. to the U.S. Constitution, truth stands firmly on the grounds that States cannot contradict a federal law; it is not customary to do, so the Constitutional federal law governs.

The above covers the district court's assignment of stated cause: 42 U.S.C. §1983 to this Case # 1:20-cv-00152-GTS-CFH filed February 12, 2020 on their April 9, 2020 printed Civil Docket first mailed on paper to Shields. And, this case addresses conflict between federal laws for free U.S. Citizen Shields, of interest to the Court, and not for filing only - but Civil Action Federal Question subject matter apt.

Moreover, U.S. Constitution Article 3. Section 2. says,

> "The judicial Power shall extend to all Cases,
> in Law and Equity, arising under this Constitution, the
> Laws of the United States..."

28 U.S.C.§453 is in conflict with 28 U.S.C. § 1915 for Shields, here, and this is a Case in Law and Equity, arising under the U.S. Constitution, with conflict between these Laws of the United States for Shields.

And, U.S. Constitution Article 3. Section 2. guarantees:

> **"In all 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."**

May the Congress save the truth inside 28 U.S.C. §453. It appears such declaratory decree was violated, and it is possible that the U.S. district court may not be immune from such conflict between federal laws because of the harm they have caused Shields.

Thank you.

Respectfully submitted,

Antonia W. Shields, May 5, 2020

Antonia W. Shields, *pro se*

PO Box 195

Saratoga Springs, New York 12866

315.368.4415

Declaration: To the best of my knowledge and ability, *pro se*, not an attorney, free U.S. Citizen Shields affirms the above to be the truth.

Antonia W. Shields

May 5, 2020

May 5, 2020

CLOSED,PRO SE

U.S. District Court
Northern District of New York - Main Office (Syracuse) [NextGen CM/ECF Release 1.6 (Revision 1.6.2)] (Albany)
CIVIL DOCKET FOR CASE #: 1:20-cv-00152-GTS-CFH
Internal Use Only

Shields v. United States
Assigned to: Chief Judge Glenn T. Suddaby
Referred to: Magistrate Judge Christian F. Hummel
Demand: $10,000
Case in other court: 2nd Circuit, 20-03427
Cause: 42:1983 Civil Rights Act

Date Filed: 02/12/2020
Date Terminated: 07/26/2021
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	1	COMPLAINT against United States filed by Antonia W. Shields. (Attachments: # 1 Civil Cover Sheet)(hmr) (Entered: 02/13/2020)
02/12/2020	2	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	3	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	4	PRO SE HANDBOOK and NOTICE returned executed by Antonia W. Shields. (Attachments: # 1 Cover letter, # 2 Mailing envelope) (see) (Entered: 02/21/2020)
04/30/2020	5	REPORT-RECOMMENDATION AND ORDER: re 1 Complaint filed by Antonia W. Shields: that plaintiff's motion to proceed in forma pauperis (Dkt. No. 2) is Granted for purposes of filing only; Recommended, that plaintiff's complaint (Dkt. No. 1) be Dismissed with prejudice and without opportunity to 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: 2 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: # 1 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	6	OBJECTIONS to 5 Report and Recommendations by Antonia W. Shields. (hmr) (Entered: 05/06/2020)
06/10/2020	7	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: # 1 Envelope)(hmr) (Entered: 06/11/2020)
06/15/2020	8	TEXT ORDER denying with prejudice 7 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

APPENDIX L.

		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	9	Letter Motion from Antonia W. Shields requesting status of the case. (Attachments: # 1 Envelope)(hmr) (Entered: 06/22/2020)
06/22/2020		Clerk mailed a copy of the docket sheet, in response to the 9 letter motion requesting status of case on 6/22/2020 by regular mail. (see) (Entered: 06/22/2020)
09/11/2020	10	DECISION AND ORDER 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). 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	11	JUDGMENT 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 .(Copy served upon Plaintiff via regular and certified mail). (sal) (Entered: 09/11/2020)
09/24/2020	12	Letter from Antonia W. Shields requesting a copy of the Docket Sheet. [Albany Clerk's office mailed a copy of the docket sheet to pro se plaintiff via regular mail on 9/24/2020.] (hmr) Modified on 9/25/2020 to change from a letter motion to a letter (sal). (Entered: 09/25/2020)
09/30/2020	13	NOTICE OF APPEAL as to 10 Decision and Order on Report and Recommendations, 11 Judgment, by Antonia W. Shields. [Filed stamped copy was mailed to pro se plaintiff, via regular mail on 10/2/2020, by the Albany Clerk's office.] (hmr) (Entered: 10/02/2020)
10/02/2020	14	ELECTRONIC NOTICE AND CERTIFICATION sent to US Court of Appeals re 13 Notice of Appeal. [A copy of the Electronic Notice and Certification, along with the Civil Appeals Packet were mailed to pro se plaintiff via regular mail on 10/2/2020.] (Attachments: # 1 Civil Appeals Packet)(hmr) (Entered: 10/02/2020)
10/07/2020	15	Supplemental Electronic Certification transmitted to US Court of Appeals re 13 Notice of Appeal. [Copy of this Supplemental Electronic Certification was mailed to pro se plaintiff via regular mail on 10/7/2020.] (hmr) (Entered: 10/07/2020)
06/03/2021		USCA Case Number 20-3427 for 13 Notice of Appeal filed by Antonia W. Shields. (nas,) (Entered: 06/03/2021)
06/04/2021	16	SUMMARY ORDER of USCA [Certified Copy Issued on 6/4/2021] as to 13 Notice of Appeal filed by Antonia W. Shields. (hmr) (Entered: 06/04/2021)
07/26/2021	17	MANDATE of USCA [Issued on 7/26/2021] as to 13 Notice of Appeal filed by Antonia W. Shields: It is hereby Ordered, Adjudged, and Decreed that the judgment of the district court is Affirmed, but the case is Remanded for the court to amend its judgment and enter dismissal without prejudice, and Deny Shield's motion for a stay. (hmr) (Entered: 07/26/2021)
07/26/2021	18	AMENDED JUDGMENT that, pursuant to the Mandate issued on July 26, 2021 (Dkt. No. 17) by the United States Court of Appeals for the Second Circuit, Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 5) is ACCEPTED and ADOPTED in its entirety; and Plaintiff's Complaint (Dkt. No. 1) is DISMISSED without prejudice. The Clerk is directed to CLOSE this action. All of the above pursuant to the Mandate issued on July 26, 2021 by the United States Court of Appeals for the Second Circuit. Dkt. No. 17 . (Copy served via regular and certified mail) (sal) (Entered: 07/26/2021)

Civl 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 02/10/2020

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 M.

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 28U.S.C.§1391(c):

> **"...a natural person ... shall be deemed to reside in the district in which that person is domiciled."**

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

Rachel A. Petryna
Notary

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

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 10, 2020 **February 10, 2020**

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

PO Box 195

Saratoga Springs, NY 12866

315.368.4415

Notary

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

Antonia W. Shields pro se August 27, 2021

Antonia W. Shields, pro se

PO Box 195

Saratoga Springs, NY 12866

(315) 368-4415