

NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

DAWUD C.S. GABRIEL,

Petitioner,

v.

WINDY HILL FOLIAGE INC.,

Respondent.

**On Petition For Writ of Certiorari To The
United States Court of Appeals
For the Eleventh (11th) Circuit
(Eleventh (11th) Cir. Case No. 21-12901)**

***APPENDIX
VOLUME I***

Dawud C.S. Gabriel
Non-Attorney, Pro Se Petitioner
1307 Thurston Avenue
Sebring, FL 33870
(863) 464-1709

APPENDIX VOLUME I

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[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-12901

Non-Argument Calendar

DAWUD CANAAN STURRUP GABRIEL,

Plaintiff-Appellant,

versus

WINDY HILL FOLIAGE INCORPORATED,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:21-cv-14177-AMC

APPENDIX "A"

Before WILSON, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Dawud Canaan Sturup Gabriel, *pro se*, appeals the district court (1) striking without prejudice of his amended complaint as an impermissible shotgun pleading, (2) denying without prejudice his proposed second amended complaint because it too was a shotgun pleading, and (3) denying his motion to set aside those rulings as void. He contends that the district court abused its discretion in making those rulings. He also contends, for the first time on appeal, that the district court judge erred by not *sua sponte* recusing herself. After careful review, we find no error and affirm.

I.

Forfeiture occurs automatically whenever a party fails to timely assert their rights. *United States v. Campbell*, 26 F.4th 860, 874 (11th Cir. 2022) (en banc). But courts do have the ability to “resurrect” forfeited issues *sua sponte* in “extraordinary circumstances.” *Id.* at 872 (quoting *Wood v. Milyard*, 566 U.S. 463, 471 n.5 (2012)). We have identified five situations in which we may exercise our discretion to consider a forfeited issue:

- (1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice;
- (2) the party lacked an opportunity to raise the issue at the district court level;
- (3) the interest of substantial justice is at stake;
- (4) the proper resolution is beyond any doubt; or
- (5) the issue presents significant

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questions of general impact or of great public concern.

Id. at 873. Additionally, *pro se* pleadings and other filings are liberally construed. *See Gomez-Diaz v. United States*, 433 F.3d 788, 791 (11th Cir. 2005).

A district judge must disqualify herself from any proceeding in which her impartiality might reasonably be questioned. 28 U.S.C. § 455(a). “Section 455(a) requires recusal when the objective circumstances create an appearance of partiality.” *United States v. Cerceda*, 188 F.3d 1291, 1293 (11th Cir. 1999). But a charge of partiality must be supported by some factual basis. *Id.* “Recusal cannot be based on ‘unsupported, irrational or highly tenuous speculation.’” *Id.* (quoting *In re United States*, 666 F.2d 690, 694 (1st Cir. 1981)). Furthermore, under 28 U.S.C. § 144,

[w]henver a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

Here, although Gabriel has forfeited the recusal issue by failing to raise it below, we exercise our discretion to consider the forfeited issue because the proper resolution is beyond any doubt: the district judge did not err by not recusing herself *sua sponte*. Gabriel’s claims to the contrary are based on unsupported

speculation. And § 144 does not apply because Gabriel did not file an affidavit with the district court stating that he believed the district judge harbored personal bias or prejudice against him. Accordingly, we affirm on this issue.

II.

We review orders dismissing complaints based on non-compliance with federal rules for an abuse of discretion. *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985). We review *de novo* a district court's ruling on a Federal Rule of Civil Procedure 60(b)(4) motion to set aside a judgment as void. *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001).

To state a claim for relief, a pleading must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b). “If doing so would promote clarity, each claim founded on a separate transaction or occurrence . . . must be stated in a separate count.” *Id.* *Pro se* litigants are “subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure.” *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

Complaints that violate either Rule 8(a)(2) or Rule 10(b), or both, are often referred to as “shotgun pleadings.” *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). We have identified four rough types of shotgun pleadings:

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(1) complaints “containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint”; (2) complaints containing “conclusory, vague, and immaterial facts not obviously connected to any particular cause of action”; (3) complaints that do “not separat[e] into a different count each cause of action or claim for relief”; and (4) complaints that “assert[] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.” *Id.* at 1322–23. Shotgun pleadings violate Rule 8(a)(2)’s “short and plain statement” requirement by “fail[ing] . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1294–95 (11th Cir. 2018) (alteration in original) (quoting *Weiland*, 792 F.3d at 1323). Shotgun pleadings “waste scarce judicial resources, ‘inexorably broaden[] the scope of discovery,’ ‘wreak havoc on appellate court dockets,’ and ‘undermine[] the public’s respect for the courts.’” *Id.* (alterations in original) (quoting *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 979–80 & n.54 (11th Cir. 2008)).

While district courts may *sua sponte* dismiss a complaint on shotgun pleading grounds, we require them to allow a litigant one chance to remedy such deficiencies. *Id.* For example, in *Shabanets*, the plaintiff filed a “mostly incoherent complaint” with “duplicative,” “inconsistent,” and “wholly conclusory” allegations in

paragraphs spanning multiple pages. *Id.* at 1294. The district court gave the plaintiff an opportunity to replead and remedy his shotgun pleading issues, “and provided him with a veritable instruction manual on how to do so.” *Id.* at 1293–95. We endorsed this approach, stating that, “[i]n these cases, even if the parties do not request it, the district court ‘should strike the complaint and instruct counsel to replead the case.’” *Id.* at 1295 (quoting *Byrne v. Nezhat*, 261 F.3d 1075, 1133 n.113 (11th Cir. 2001)).

Under Rule 60(b)(4), “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding [if] . . . the judgment is void.” Generally, a judgment is void under this rule if the court that rendered it lacked jurisdiction, acted in a manner inconsistent with due process of law, or was powerless to enter it. *Burke*, 252 F.3d at 1263.

Here, the district court did not abuse its discretion in dismissing Gabriel’s amended complaint as a shotgun pleading. First, the court properly concluded that the nearly 3,000-page amended complaint was a shotgun pleading. Second, the court followed our directive by giving Gabriel one chance to amend, along with a veritable instruction manual on how to do so. Finally, Gabriel has failed to explain why it was “impossible” for him to comply with the 25-page limit imposed by the court on his second amended complaint. As to his proposed second amended complaint, the minor alterations he claimed to have made make it no less of a shotgun pleading than his first amended complaint.

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Additionally, the district court properly denied Gabriel's motion to set aside as void its order striking his shotgun pleading. Because, as explained above, the court properly complied with our precedent regarding shotgun pleadings and amendment, the order was not void. Accordingly, we affirm on this issue as well.

AFFIRMED.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

CASE NO. 21-14177-CIV-CANNON

DAWUD CANAAN STURRUP GABRIEL,

Plaintiff,

v.

WINDY HILL FOLIAGE INCORPORATED,

Defendant.

ORDER STRIKING AMENDED COMPLAINT

THIS CAUSE comes before the Court upon a *sua sponte* review of the record. Plaintiff filed a *pro se* Complaint on April 21, 2021 [ECF No. 1]. On July 6, 2021, Plaintiff amended his complaint and filed a 2896-page Amended Complaint consisting of 820 claims against Defendant for various alleged violations under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq* [ECF No. 17]. The Amended Complaint is a shotgun pleading that is due to be stricken.

A district court has “the power to control and direct the cases on its docket,” including “the inherent power to dismiss a case.” *Burden v. Yates*, 644 F.2d 503, 505 (5th Cir. 1981). The Eleventh Circuit has prohibited *sua sponte* dismissals of cases where “1) the defendant had not filed an answer and the plaintiff still had a right to amend his complaint pursuant to [Rule 15(a)]; 2) the plaintiff brought his claim in good faith; and 3) the district court failed to provide the plaintiff with notice of its intent to dismiss or an opportunity to respond.” *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1057 (11th Cir. 2007). There is, however, an exception to this general rule against dismissals without notice. A complaint may be subject to dismissal without notice where it is patently frivolous or if amendment would be futile. *Tazoe v. Airbus S.A.S.*, 631 F.3d

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1321, 1336 (11th Cir. 2011). A complaint is “frivolous” where “it lacks an arguable basis either in law or fact.” *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001). Baseless factual contentions include those that are “fanciful,” “fantastic,” “delusional,” or that “rise to the level of irrational or wholly incredible.” *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992).

Moreover, notwithstanding the leniency afforded to *pro se* litigants, this deferential standard does not permit the filing of impermissible “shotgun” pleadings. *See Weiland v. Palm Beach Cty. Sheriff’s Office*, 792 F.3d 1313, 1321-23 (11th Cir. 2015). The Eleventh Circuit repeatedly has condemned the use of shotgun pleadings for “imped[ing] the administration of the district courts’ civil docket.” *PVC Windoors, Inc. v. Babbittbay Beach Constr., N.V.*, 598 F.3d 802, 806 n.4 (11th Cir. 2010). Therefore, it is well-settled that shotgun pleadings are an unacceptable form of setting forth a claim for relief. *Strategic Income Fund, LLC v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1296 (11th Cir. 2002).

The Amended Complaint is a shotgun pleading. It contains 2,896 pages with 820 claims—none of which provides Defendant with fair notice of the claims being lodged against it. It does not provide a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). And it does not assert “each claim founded on a separate transaction or occurrence” in a “separate count.” Fed. R. Civ. P. 10(b).¹

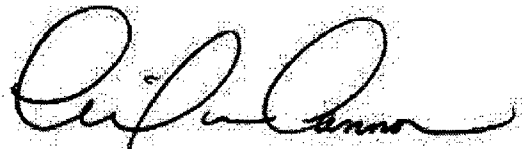
Plaintiff is granted one final opportunity to refile an amended pleading that clearly sets forth the factual and legal basis for each count asserted. Any amended complaint must specifically identify the parties against whom each claim is asserted and the individual roles of each Defendant as to each claim. Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Amended Complaint [ECF No. 17] is **STRICKEN**.

¹ Plaintiff’s proposed Second Amended Complaint [ECF No. 24] suffers from the same defects.

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2. Defendant's Motion to Dismiss Plaintiff's Amended Complaint [ECF No. 22] is **DENIED AS MOOT**.
 3. Consistent with the purpose of Fed. R. Civ. P. 8, Plaintiff is granted leave to file one **final** second amended complaint not exceeding **twenty-five (25) pages** in length.
 4. On or before **August 31, 2021**, the second amended complaint must be filed as a separate docket entry, signed under the penalty of perjury, and contain a short and plain statement supporting each claim for relief, a basis for federal jurisdiction, and a demand for judgment.
 5. The second amended complaint must clearly explain what each particular defendant did in reference to each claim, provide supporting facts to show why that person is being sued, and identify clearly the legal basis underlying each count asserted.
 6. Plaintiff is cautioned that failure to file a timely second amended complaint that is fully compliant with this Order will result in dismissal of this case for failure to prosecute or failure to comply with court orders. *See* Fed. R. Civ. P. 41(b).
 7. Plaintiff's Motion for Leave to File First Amended Complaint [ECF No. 24] is **DENIED WITHOUT PREJUDICE**. Plaintiff is directed to follow the instructions in this Order.
- DONE AND ORDERED** in Chambers at Fort Pierce, Florida this 6th day of July 2021.

A handwritten signature in black ink, appearing to read 'Aileen Cannon', written over a horizontal line.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record

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

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

July 27, 2022

Mr. Dawud C. S. Gabriel
1307 Thurston Avenue
Sebring, FL 33870

Re: Dawud Canaan Sturup Gabriel
v. Windy Hill Foliage Incorporated
Application No. 22A72

Dear Mr. Gabriel:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on July 27, 2022, extended the time to and including October 24, 2022.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by 

Jacob A. Levitan
Case Analyst

Appendix "C"

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

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

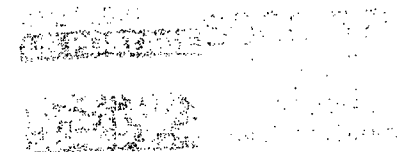
NOTIFICATION LIST

Mr. Dawud C. S. Gabriel
1307 Thurston Avenue
Sebring, FL 33870

Clerk
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, DC 20543-0001

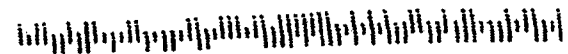
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July 27, 2022

Mr. Dawud C. S. Gabriel
1307 Thurston Avenue
Sebring, FL 33870

Re: Dawud Canaan Sturruo Gabriel
338 7034254 C111



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

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

October 13, 2022

Mr. Dawud C. S. Gabriel
1307 Thurston Avenue
Sebring, FL 33870

Re: Dawud Canaan Sturup Gabriel
v. Windy Hill Foliage Incorporated
Application No. 22A72

Dear Mr. Gabriel:

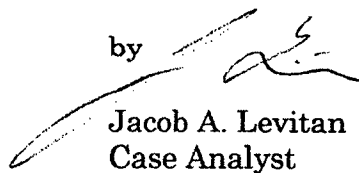
The application for a further extension of time in the above-entitled case has been presented to Justice Thomas, who on October 13, 2022 denied the application.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by



Jacob A. Levitan
Case Analyst

Appendix "D"

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

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

NOTIFICATION LIST

Mr. Dawud C. S. Gabriel
1307 Thurston Avenue
Sebring, FL 33870

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, DC 20543-0001

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1307 THURSTON
SEBRING, FL 33870
ZIP 33870
041M11120801

October 13, 2022

Mr. Dawud C. S. Gabriel
1307 Thurston Avenue
Sebring, FL 33870

3387034254 COII

