No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

XIAMIN ZENG,

Petitioner,

v.

JOHN CHELL, et al.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

Xiamin Zeng
Petitioner, Pro Se
110 Columbia Street, Apt. 1A
New York, NY 10002
(929) 257-1509
amyzane77@gmail.com

QUESTIONS PRESENTED

1. Whether 28 U.S.C. §1915(e) — a provision governing proceedings in forma pauperis — may be used to dismiss an appeal filed by a litigant who paid the full appellate filing fee and never sought or obtained in forma pauperis status, where the district court's certification under §1915(a)(3) was rendered moot by that payment.

2. Whether an appeal grounded in a documented Rule 77(d) clerk notice failure — resulting in nine months without notice of a dispositive order — may be dismissed as "frivolous" under *Neitzke v. Williams*, 490 U.S. 319 (1989), without identifying an indisputably meritless legal theory or clearly baseless factual allegation, and without addressing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), *Pioneer Investment Services Co. v. Brunswick Associates Ltd.*, 507 U.S. 380 (1993), or *Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990).

PARTIES TO THE PROCEEDING

Petitioner: Xiamin Zeng, pro se
Respondents: John Chell, et al.

TABLE OF CONTENTS

Opinions Below 1
Jurisdiction 1
Constitutional and Statutory Provisions 1
Statement of the Case 2
I. District Court Proceedings 2
II. Rule 60(b) Motion 2
III. Appellate Proceedings 3
IV. Post-Judgment Proceedings 3
Reasons for Granting the Writ 4
I. The §1915(e) Question Warrants Certiorari 4
A. Text and Legislative History 4
B. The §1915(a)(3) Certification Does Not Trigger §1915(e) After Full Fee Payment 5
C. The Decision Below Cannot Be Reconciled With Holdings of Multiple Circuits 5
D. Recurring Practical Consequence 7
II. The *Neitzke* Question Warrants Certiorari 8
A. The Standard 8
B. The Panel's Failure 8
C. Systemic Consequence and *Irwin* 9
III. The Two Questions Compound the Denial of Review 9
Conclusion 10
Appendix Summary 11
Certificates of Compliance and Service 12

Appendix A — Second Circuit Order Dismissing Appeal ..... App. A
Appendix B — Order Denying Rehearing En Banc ..... App. B
Appendix C — Order Denying Reconsideration ..... App. C
Appendix D — Second Circuit Mandate ..... App. D
Appendix E — District Court Record ..... App. E
Appendix F — Proof of Filing Fee Payment ..... App. F
Appendix G — Postmarked Envelope ..... App. G
Appendix H — Administrative Complaint to Chief Clerk ..... App. H

TABLE OF AUTHORITIES

Cases

Apple v. Glenn, 183 F.3d 477 (6th Cir. 1999) 6
Bazrowx v. Scott, 136 F.3d 1053 (5th Cir. 1998) 6
Benson v. O'Brian, 179 F.3d 1014 (6th Cir. 1999) 5, 6
Coppedge v. United States, 369 U.S. 438 (1962) 5
Haines v. Kerner, 404 U.S. 519 (1972) 9, 10
Irwin v. Department of Veterans Affairs, 498 U.S. 89 (1990) 3, 9, 10
Marks v. Solcum, 98 F.3d 494 (9th Cir. 1996) 6
Meadows v. United States Servs., Inc.,
963 F.3d 240 (2d Cir. 2020) 6
Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306 (1950) 3, 8, 10
Neitzke v. Williams, 490 U.S. 319 (1989) 8, 9, 10
Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship,
507 U.S. 380 (1993) ..... passim

Constitutional Provisions

U.S. Const. amend. XIV (Due Process Clause) 1

Statutes and Rules

28 U.S.C. §1254(1) 1
28 U.S.C. §1915(a)(3) ..... passim
28 U.S.C. §1915(e) ..... passim
Federal Rule of Civil Procedure 60(b) 1, 2, 11
Federal Rule of Civil Procedure 77(d) ..... passim
Prison Litigation Reform Act, Pub. L. No. 104-134,
110 Stat. 1321 (1996) 3, 4, 6, 10

Legislative History

141 Cong. Rec. S7498 (daily ed. May 25, 1995)
(statement of Sen. Bob Dole) 4

OPINIONS BELOW

The opinions below are unreported. They consist of the January 23, 2024 judgment and the July 15, 2025 order denying Petitioner's Rule 60(b) motion, issued by the United States District Court for the Southern District of New York (Hon. John G. Koeltl) (App. E); the January 15, 2026 order dismissing the appeal under 28 U.S.C. §1915(e) (DktEntry 55.1) (App. A); the February 5, 2026 order denying reconsideration (DktEntry 60.1) (App. C); and the March 12, 2026 order denying rehearing en banc (DktEntry 65.1) (App. B).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1). The court of appeals issued its mandate on February 13, 2026 (DktEntry 61.1) (App. D). On March 12, 2026, it denied Petitioner's motion to recall the mandate and petition for rehearing en banc (DktEntry 65.1) (App. B). Under Supreme Court Rule 13.3, the ninety-day period for filing a petition for writ of certiorari runs from March 12, 2026; the filing deadline is June 10, 2026. The petition is timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS

28 U.S.C. §1915(a)(3)

28 U.S.C. §1915(e)

Federal Rule of Civil Procedure 77(d)

Federal Rule of Civil Procedure 60(b)

U.S. Const. amend. XIV (Due Process Clause)

STATEMENT OF THE CASE

I. District Court Proceedings

Petitioner Xiamin Zeng filed a civil rights action in the Southern District of New York. On January 23, 2024, the district court entered judgment. On July 9, 2024, the district court entered a further dispositive order, not reproduced in the appendix. The clerk did not serve Petitioner with notice of that order. In violation of Federal Rule of Civil Procedure 77(d), the clerk mailed the order exclusively to counsel who had been terminated from the case. Petitioner was proceeding pro se. She did not receive actual notice for approximately nine months. (App. E)

II. Rule 60(b) Motion

Upon discovering the July 9, 2024 order, Petitioner promptly filed a Rule 60(b) motion invoking the Rule 77(d) notice failure and the equitable framework of *Pioneer Investment Services Co. v. Brunswick Associates Ltd.*, 507 U.S. 380 (1993). On July 15, 2025, the district court denied the motion as untimely. In its order, the court certified pursuant to 28 U.S.C. §1915(a)(3) that any appeal would not be taken in good faith and denied IFP status for purposes of appeal. (App. E) That certification was rendered moot when Petitioner paid the full $605 appellate filing fee on August 5, 2025, without applying for or obtaining IFP status. (App. F)

III. Appellate Proceedings

Petitioner timely appealed and paid the full $605 appellate filing fee. (App. F) She did not apply for or obtain in forma pauperis status. Financial disclosure forms were submitted solely because a court case manager indicated they were required for administrative pro bono referral purposes — not as a voluntary IFP election. The court's administrative records misclassified the appeal as a "Prison Rights" case. On August 14, 2025, the New York State Attorney General's Office confirmed in writing to Chief Clerk Wolfe that defendant Inspector Chell is a City of New York employee represented by the NYC Law Department, independently establishing that no party to this case is a prisoner. Petitioner formally requested correction of the misclassification on August 25, 2025; it was never corrected. (App. H) On January 15, 2026, the court issued a notice of case manager reassignment (DktEntry 54.1). On the same day, a three-judge panel dismissed the appeal under §1915(e) as lacking "an arguable basis either in law or in fact" (DktEntry 55.1). (App. A) The dismissal order did not address whether §1915(e) applies to a fee-paid appellant, did not address whether the §1915(a)(3) certification could properly trigger §1915(e) review after full fee payment, and did not engage with Rule 77(d), *Mullane*, *Pioneer*, or *Irwin*.

IV. Post-Judgment Proceedings

Petitioner's Motion for Reconsideration was denied on February 5, 2026 (DktEntry 60.1) (App. C). The denial order and mandate were mailed simultaneously on February 13, 2026 (DktEntry 61.1) (App. D; App. G); Petitioner did not receive either until February 19, 2026. A Petition for Rehearing En Banc and Motion to Recall the Mandate were both denied on March 12, 2026 (DktEntry 65.1) (App. B).

REASONS FOR GRANTING THE WRIT

I. THE §1915(e) QUESTION WARRANTS CERTIORARI

Section 1915 of Title 28 is titled "Proceedings in forma pauperis." Subsection (a)(1) establishes the gateway: a litigant obtains IFP status by submitting an affidavit of inability to pay. Subsection (e) authorizes dismissal of frivolous or deficient cases and presupposes the grant of IFP status under subsection (a). It does not establish an independent screening mechanism for litigants who have never entered the IFP framework.

A. Text and Legislative History

Section 1915(e) was enacted as part of the Prison Litigation Reform Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, to address the sharp increase in frivolous suits by prisoners proceeding without prepayment of fees. *See* 141 Cong. Rec. S7498 (daily ed. May 25, 1995) (statement of Sen. Bob Dole). Nothing in the legislative record suggests Congress intended §1915(e) to reach litigants who paid the full filing fee and never sought IFP status. Extending §1915(e) beyond its IFP framework would transform a targeted screening tool into a general frivolity filter — a result the text and history do not support. The "notwithstanding any filing fee" clause, 28 U.S.C. §1915(e)(2), does not resolve the threshold question. That clause addresses whether a litigant who has already obtained IFP status but paid a partial fee remains subject to §1915(e) screening. It does not address whether §1915(e) is triggered at all by a litigant who never sought IFP status. Applying a statute designed for indigent prisoners to a fee-paying civil rights appellant falls entirely outside §1915(e)'s text, purpose, and legislative history. (App. F; App. H)

B. The §1915(a)(3) Certification Does Not Trigger §1915(e) After Full Fee Payment

Section 1915(a)(3) is a distinct provision: it governs whether IFP status will be granted for an appeal; it does not independently authorize appellate courts to screen and dismiss appeals under §1915(e). Petitioner rendered the §1915(a)(3) certification moot by paying the full $605 appellate filing fee on August 5, 2025 — before filing her notice of appeal. (App. F) Once Petitioner paid the full fee, she stood entirely outside the IFP framework. The district court's denial of IFP status had no operative effect: Petitioner did not seek IFP status and did not need it. She paid. The Second Circuit's dismissal order invoked §1915(e) without acknowledging this sequence and without addressing whether the §1915(a)(3) certification could properly extend to authorize §1915(e) screening of a subsequently fee-paid appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that a "good faith" determination requires independent judicial assessment of whether the appeal presents a nonfrivolous question). No such independent assessment appears in the dismissal order. (App. A) As the Sixth Circuit recognized in *Benson*, §1915(e)(2) screening is properly triggered by the filing of a request for leave to proceed in forma pauperis. *Benson v. O'Brian*, 179 F.3d 1014, 1017 n.2 (6th Cir. 1999). Where no such request was filed — and none was filed here — neither the certification nor the screening authority it purports to activate has any operative basis.

C. The Decision Below Cannot Be Reconciled With Holdings of Multiple Circuits

The court of appeals dismissed petitioner's appeal sua sponte as frivolous under 28 U.S.C. §1915(e)(2)(B). That disposition cannot be reconciled with the holdings of the Fifth, Sixth, and Ninth Circuits and warrants review under Supreme Court Rule 10(a).

The Sixth Circuit has held that "28 U.S.C. §1915(e)(2) is inapplicable to actions that are not pursued in forma pauperis," vacating a dismissal where the plaintiff paid the filing fee and never requested IFP status. *Benson v. O'Brian*, 179 F.3d 1014, 1016–17 (6th Cir. 1999). The *Benson* court grounded this holding in the statute's title, structure, and legislative history, concluding that the "notwithstanding any filing fee" clause does not expand §1915(e)(2) beyond IFP proceedings, and that applying §1915(e)(2) to fee-paying litigants would negate established circuit policy requiring notice and an opportunity to respond before any sua sponte dismissal. *Id.* The Sixth Circuit reaffirmed this holding in *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999), holding that §1915(e)(2) "specifically deals with proceedings brought in forma pauperis" and that "a district court may not sua sponte dismiss a complaint where the filing fee has been paid" without affording the plaintiff adversarial process; where §1915(e)(2) does not apply, the proper mechanism is Rule 12(b)(6) — not sua sponte screening. *Id.* at 479–80. The Fifth Circuit has similarly recognized that §1915(e)(2) "could not" be invoked against a litigant "not proceeding in forma pauperis." *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998). The Ninth Circuit has described §1915(e)(2) as applying to "prisoner proceedings in forma pauperis." *Marks v. Solcum*, 98 F.3d 494, 495 (9th Cir. 1996). The Second Circuit has previously applied §1915(e) where the appellant expressly sought in forma pauperis status. *Meadows v. United States Servs., Inc.*, 963 F.3d 240 (2d Cir. 2020). However, *Meadows* involved an appellant who affirmatively requested IFP status and proceeded under the §1915 framework. Petitioner here never sought or obtained IFP status and paid the full appellate filing fee. The decision below therefore extends §1915(e) beyond the circumstances presented in *Meadows*, highlighting a departure from the statute's core IFP framework.

Petitioner paid the full $605 appellate filing fee and did not seek in forma pauperis status in the court of appeals. Under the holdings of the Fifth, Sixth, and Ninth Circuits, §1915(e)(2) was unavailable. The decision below cannot be reconciled with those holdings.

D. Recurring Practical Consequence

Federal courts of appeals operate pro bono referral programs that routinely require fee-paying appellants to complete financial disclosure forms at court direction — not as voluntary IFP applications. If such forms trigger §1915(e) screening, fee-paying appellants may unknowingly forfeit the appellate rights for which they paid — without notice, without consent, and without any election of IFP status — solely because they cooperated with an administrative process they did not initiate. This result is neither compelled by §1915(e)'s text nor consistent with its purpose. The resulting asymmetry is circuit-dependent and congressionally unauthorized. A fee-paying pro se appellant in the Fifth or Sixth Circuit proceeds under ordinary civil rules; the same appellant in the Second Circuit may be summarily dismissed. The reach of a federal statute does not vary by circuit. Should the Court find the circuit conflict insufficiently developed, the decision below independently warrants review under Rule 10(a) as a departure from the accepted and usual course of judicial proceedings calling for this Court's supervisory authority.

II. THE *NEITZKE* QUESTION WARRANTS CERTIORARI

A. The Standard

Under *Neitzke v. Williams*, 490 U.S. 319 (1989), an appeal is frivolous only where it "lacks an arguable basis either in law or in fact." *Id.* at 327. The appeal must rest on "indisputably meritless legal theories" or "clearly baseless" factual allegations. *Ibid.* The frivolity standard is a threshold filter — not a merits determination.

B. The Panel's Failure

The panel's January 15, 2026 order recites the *Neitzke* standard and announces a conclusion without identifying which aspect of the appeal is "indisputably meritless" or "clearly baseless," and without addressing Rule 77(d), the nine-month notice gap, *Pioneer*, or *Mullane*. That is precisely the approach *Neitzke* forbids. (App. A) Petitioner's appeal rested on three established authorities. First, Rule 77(d) requires the clerk to serve each party not in default with notice of entered orders. The district court's own July 15, 2025 order acknowledges that the clerk sent the July 9, 2024 order only to terminated counsel. (App. E) Second, *Pioneer* requires courts to consider four factors in evaluating excusable neglect: reason for delay, danger of prejudice, length of delay, and good faith. Three favor Petitioner: the delay arose entirely from the clerk's documented Rule 77(d) failure; prejudice to Respondents is minimal; and Petitioner acted promptly upon discovery. Third, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), requires notice reasonably calculated to apprise interested parties. Mailing notice to terminated counsel does not satisfy that standard for a pro se litigant. An appeal grounded in these three authorities presents at minimum an arguable basis in law.

The panel's dismissal also conflicts with *Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990), which recognized that equitable tolling may apply where extraordinary circumstances — including governmental error — prevent timely filing. The clerk's documented Rule 77(d) failure constitutes precisely such a circumstance. Dismissing this appeal as "frivolous" effectively holds that a claim for equitable relief under *Irwin* and *Pioneer* lacks even an arguable basis in law.

C. Systemic Consequence and *Irwin*

A court of appeals cannot satisfy *Neitzke* by reciting the standard and announcing a conclusion. Without identifying what is meritless, the frivolity determination is unreviewable and the litigant is left without any appellate examination of her claims. That result conflicts with this Court's recognition that procedural due process claims grounded in governmental notice failures are entitled to meaningful judicial review. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972).

III. THE TWO QUESTIONS COMPOUND THE DENIAL OF REVIEW

Each question independently warrants certiorari. Their combined effect is total denial of meaningful appellate review. The §1915(e) misapplication eliminated threshold merits review. The *Neitzke* misapplication ensured no substantive analysis occurred even within that framework. Together, they foreclosed all review. The first error placed Petitioner's appeal — whose §1915(a)(3) certification was rendered moot by full fee payment — into an indigent-litigant screening framework she never entered. The second error ensured no examination of her claims could occur.

Had the court correctly held that §1915(e) does not reach fee-paying appellants, the appeal would have proceeded to full merits briefing. Had the court correctly applied *Neitzke* — identifying which theory is indisputably meritless — it could not have dismissed an appeal grounded in Rule 77(d), *Pioneer*, *Mullane*, and *Irwin* without explanation. The record presents the problem recognized in *Haines v. Kerner*, 404 U.S. 519, 520 (1972): a pro se litigant who followed court instructions, suffered a nine-month notice gap from documented clerk error, paid the full filing fee, and never sought IFP status — whose appeal was nonetheless dismissed under a statute designed for indigent prisoners, without examination of the legal theories raised. The deprivation of due process is complete and documented. This Court's review is warranted.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted, the January 15, 2026 judgment of the United States Court of Appeals for the Second Circuit should be reversed, and the case should be remanded for full merits briefing.

Respectfully submitted,



Xiamin Zeng
Petitioner, Pro Se
110 Columbia Street, Apt. 1A
New York, NY 10002
(929) 257-1509
amyzane77@gmail.com

May 12, 2026

APPENDIX SUMMARY

Appendix A — Second Circuit Order Dismissing Appeal Under 28 U.S.C. §1915(e), January 15, 2026 (DktEntry 55.1)

Appendix B — Second Circuit Order Denying Motion to Recall Mandate and Petition for Rehearing En Banc, March 12, 2026 (DktEntry 65.1)

Appendix C — Second Circuit Order Denying Reconsideration, February 5, 2026 (DktEntry 60.1)

Appendix D — Second Circuit Mandate, February 13, 2026 (DktEntry 61.1)

Appendix E — District Court Record — S.D.N.Y. Judgment (January 23, 2024) and Order Denying Rule 60(b) Motion (July 15, 2025)

Appendix F — Proof of $605 Appellate Filing Fee Payment, August 5, 2025

Appendix G — Postmarked Envelope Confirming Simultaneous Mailing of Denial Order and Mandate, February 13, 2026

Appendix H — Administrative Complaint to Chief Clerk Catherine O'Hagan Wolfe, August 25–28, 2025, including Letter from New York State Attorney General's Office, August 14, 2025

CERTIFICATES OF COMPLIANCE AND SERVICE

Pursuant to Supreme Court Rule 33.2, I certify that this petition contains 2,552 words, excluding the cover page, questions presented, parties to the proceeding, table of contents, table of authorities, appendix summary, and this certificate.

I further certify that on May 12, 2026, I caused a true and correct copy of the foregoing Petition for a Writ of Certiorari to be served by U.S. mail, certified mail, upon counsel for Respondent:

MacKenzie Fillow, Esq.
New York City Law Department
100 Church Street
New York, NY 10007

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 12, 2026, at New York, New York.

Xiamin Zeng
Petitioner, Pro Se
110 Columbia Street, Apt. 1A
New York, NY 10002
(929) 257-1509
amyzane77@gmail.com

APPENDIX A

Second Circuit Order Dismissing Appeal
Under 28 U.S.C. §1915(e)

January 15, 2026 — DktEntry 55.1

S.D.N.Y. – N.Y.C.
19-cv-3218
Koeltl, J.

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 15th day of January, two thousand twenty-six.

Present:

Susan L. Carney,
Michael H. Park,
Beth Robinson,
Circuit Judges.

Xiamin Zeng,

Plaintiff-Appellant,

v. 25-1956

Inspector John Chell, et al.,

Defendants-Appellees,

David Hansell, (Commissioner) in his individual capacity, et al.,

Defendants.

Appellant, pro se, has filed several motions, including for appointment of counsel, summary reversal of the underlying judgment and subsequent district court orders, and reclassification of her appeal. Upon due consideration, it is hereby ORDERED that Appellant's pending motions are DENIED, and the appeal is DISMISSED because it "'lacks an arguable basis either in law or in fact.'" *Meadows v. United Servs., Inc.*, 963 F.3d 240, 243 (2d Cir. 2020) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)); *see also* 28 U.S.C. § 1915(e).

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



APPENDIX B

Second Circuit Order Denying Motion to Recall Mandate
and Petition for Rehearing En Banc

March 12, 2026 — DktEntry 65.1

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 12th day of March, two thousand twenty-six.

Before: Susan L. Carney,
Michael H. Park,
Beth Robinson,
Circuit Judges.

Xiamin Zeng,

Plaintiff - Appellant,

v.

Inspector John Chell, Danielle Febus, Detective, Queens Child Advocacy Center, in her individual capacity, Officer Irwin Luperon, Police Officer, 75th Precinct, Sheild No. #27763, Gary DeNezzo, Rank FY2000, George Tavarez, #5354, The City of New York, Erlene Wiltshire, Shield No. #24340, both in their individual and professional capacities, Christopher Robley, (#23263),

Defendants - Appellees.

ORDER

Docket No. 25-1956

Appellant moves the Court to recall the mandate and accept for filing the petition for rehearing en banc dated February 23, 2026.

IT IS HEREBY ORDERED that the motion is DENIED.

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



APPENDIX C

Second Circuit Order Denying Reconsideration

February 5, 2026 — DktEntry 60.1

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 5th day of February, two thousand twenty-six,

Present: Susan L. Carney,
Michael H. Park,
Beth Robinson,

Circuit Judges.

Xiamin Zeng,

Plaintiff - Appellant,

v.

Inspector John Chell, Danielle Febus, Detective, Queens Child Advocacy Center, in her individual capacity, Officer Irwin Luperon, Police Officer, 75th Precinct, Sheild No. #27763, Gary DeNezzo, Rank FY2000, George Tavarez, #5354, The City of New York, Erlene Wiltshire, Shield No. #24340, both in their individual and professional capacities, Christopher Robley, (#23263),

Defendants - Appellees,

David Hansell, (Commissioner) in his individual capacity, Diego Andrianzan, CPS Case Manager, in his individual capacity, New York Police Department,

Defendants.

ORDER
Docket No. 25-1956

Appellant Xiamin Zeng filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

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



APPENDIX D

Second Circuit Mandate

February 13, 2026 — DktEntry 61.1

MANDATE

S.D.N.Y. – N.Y.C.
19-cv-3218
Koeltl, J.

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 15th day of January, two thousand twenty-six.

Present:

Susan L. Carney,
Michael H. Park,
Beth Robinson,
Circuit Judges.

Xiamin Zeng,

Plaintiff-Appellant,

v. 25-1956

Inspector John Chell, et al.,

Defendants-Appellees,

David Hansell, (Commissioner) in his individual capacity, et al.,

Defendants.

Appellant, pro se, has filed several motions, including for appointment of counsel, summary reversal of the underlying judgment and subsequent district court orders, and reclassification of her appeal. Upon due consideration, it is hereby ORDERED that Appellant's pending motions are DENIED, and the appeal is DISMISSED because it "'lacks an arguable basis either in law or in fact.'" *Meadows v. United Servs., Inc.*, 963 F.3d 240, 243 (2d Cir. 2020) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)); *see also* 28 U.S.C. § 1915(e).

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

MANDATE ISSUED ON 02/13/2026

APPENDIX E

District Court Record
S.D.N.Y. — 19-cv-3218 (JGK)

Judgment: January 23, 2024
Order Denying Rule 60(b) Motion: July 15, 2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

XIAMIN ZENG,

Plaintiff,

- against -

JOHN CHELL, ET AL.,

Defendants.

19-cv-3218 (JGK)

MEMORANDUM OPINION AND ORDER

JOHN G. KOELTL, District Judge:

The plaintiff, Xiamin Zeng, brought this complaint pursuant to 42 U.S.C. § 1983 and New York state law against Detective Danielle Febus, Inspector John Chell, Detective Gary DeNezzo, Sergeant George Tavares, Officer Irwin Luerpon, Officer Erlene Wiltshire, Officer Christopher Robley, and the City of New York (the "City"), alleging false arrest, excessive force, malicious prosecution, denial of a fair trial, abuse of criminal process, municipal liability, and denial of medical treatment. In a Memorandum Opinion and Order dated March 1, 2022, this Court granted in part and denied in part the defendants' motion to dismiss the complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). See Zeng v. Chell, No. 19-cv-3218, 2022 WL 624873, at *1, *11 (S.D.N.Y. Mar. 1, 2021) ("March Opinion"). This Court dismissed Zeng's Section 1983 claims for false arrest, malicious prosecution, denial of a right to a fair trial, malicious abuse of process, and municipal liability in their entirety. See March Opinion, at *4-6. There are no claims

remaining against Detective Gary DeNezzo, Sergeant George Tavares, Police Officer Irwin Luperon, Police Officer Christopher Robley, or Police Officer Erlene Wiltshire. See ECF No. 109.[1] Zeng's remaining claims are against Detective Febus for excessive force and deliberate indifference to unconstitutional conditions of confinement under Section 1983, and assault and battery against Detective Febus and the City under New York state law. The defendants now move for summary judgment dismissing each claim and in addition, contend that Detective Febus is entitled to qualified immunity. The defendants further request that the Court deny supplemental jurisdiction if the federal claims are dismissed.

In response to the defendants' motion for summary judgment, the plaintiff did not attempt to defend her federal claims or respond to the argument that Detective Febus was protected by qualified immunity. Rather, the plaintiff only defended her claims of assault, battery, and excessive force. See ECF No. 120 at 10-11. At the argument on the motion on December 20, 2023, the plaintiff's counsel made it clear that the plaintiff abandoned her federal claims, see Hearing Tr. at 10-11, and requested that the Court decline to exercise supplemental jurisdiction over the plaintiff's state law claims of excessive force, assault, and battery under New York state law, see id. at 11.

[1] Inspector John Chell and Officer Robley were never served and, therefore, are not defendants. Frank Decl. ¶ 7, ECF No. 111.

I.

The following facts are taken from the parties' Local Rule 56.1 Statements and supporting papers and are undisputed unless otherwise noted.

The plaintiff, Xiamin Zeng, was called to the police station on January 31, 2018 in response to a text message informing her that her son was at the Queens Child Abuse Squad and asking her to pick him up. See ECF No. 117 ¶¶ 5-5A. When she arrived, at approximately 12:00 p.m., id. ¶¶ 6-6A, an officer directed her to wait for Detective Febus in a room with glass walls, id. ¶¶ 7-7A, where she waited for approximately three hours, ECF No. 121 ¶ 5. While she waited, Zeng alerted the officers to her difficulty breathing, asked the officers for water, and asked to use the bathroom. Id. She was told to wait for Detective Febus. Id.

Thereafter, Detective Febus arrived and Zeng told the Detective that she wanted to see her son, had a doctor's appointment in the afternoon, wanted to see her attorney, needed to drink water, and needed to use the bathroom. See ECF No. 117 ¶¶ 17-17A. Zeng also told the Detective that she was having difficulty breathing, see ECF No. 121 ¶ 5. Zeng has been prescribed an inhaler for diagnosed asthma, see ECF No. 117 ¶ 12,

but did not bring her medication or any other asthma treatment with her to the police station, see id. ¶ 13.[2]

Detective Febus ignored these complaints, ECF No. 117 ¶¶ 18, 18A, and instead ran a system check for the plaintiff, which revealed "that there was an active investigation card from the 75th Precinct stating that there was probable cause to arrest [Zeng]." Id. ¶¶ 20-20A. The investigation stemmed from a complaint made against Zeng by Gang Liu, her ex-boyfriend and the father of her child. Id. ¶¶ 20-20A.

Detective Febus then arrested Zeng and placed a single handcuff on Zeng's wrist. See ECF No. 117 ¶¶ 24, 24A. Ten to twenty minutes later, Detective Febus escorted Zeng to a police vehicle, id. ¶¶ 25, 25A, and Zeng waited outside the vehicle for an additional ten to twenty minutes. Id. ¶¶ 27-27A. Zeng complained to Detective Febus that her head, arm, and wrist hurt, and she asked the Detective to loosen her handcuff, but the Detective did not do so. Id. ¶¶ 30, 30A, 31, 31A. When Zeng arrived at the 75th Precinct about 45 minutes to one hour later, Detective Febus removed the handcuff from her wrist and then left. Id. ¶¶ 31, 31A–33, 33A.

On February 1, 2018, Zeng was arraigned and released from custody. Id. ¶¶ 35, 35A. In total she was handcuffed for no more

[2] The initial conversation between Detective Febus and Zeng lasted about a half hour. See ECF No. 117 ¶¶ 19, 19A.

than 100 minutes, id. ¶¶ 34-34A, and denied access to a bathroom for approximately five hours, assuming she was permitted to use the bathroom immediately upon arriving at the 75th Precinct, id. ¶¶ 15, 15A, 25, 25A, 27, 27A, 32, 32A, which Zeng alleges that she was denied, see ECF No. 118 ¶ 9; ECF No. 121 ¶ 9. Detective Febus was present with Zeng for under three hours. ECF No. 117 ¶¶ 19, 25, 25A, 27, 27A, 32, 32A, 33, 33A.

The first time Zeng sought medical attention after her arrest was a visit to a doctor on April 21, 2018, where she raised concerns about a cough, runny nose, fatigue, and intermittent hearing loss. ECF No. 117 ¶¶ 38, 38A, 39, 39A. Her physical examination revealed that she had normal hearing and was experiencing nasal congestion. Id. ¶¶ 40, 40A. On July 14, 2019, Zeng began physical therapy for lower back pain that started recently. See ECF No. 117 ¶¶ 43, 43A.[3]

On April 10, 2019, Zeng commenced this action. ECF No. 2. After this case commenced, Zeng alleged for the first time that the handcuffs caused her wrists to bleed. See ECF No. 118 ¶ 10. She asserted that she sustained injuries to her wrist, including "very deep red marks with some areas of bleeding." ECF No. 118 ¶ 10.

[3] Zeng does not allege that the physical therapy she sought is related to the arrest.

II.

The standard for granting summary judgment is well established. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Gallo v. Prudential Residential Servs. L.P., 22 F.3d 1219, 1223 (2d Cir. 1994).[4]

"[T]he trial court's task at the summary judgment motion stage of the litigation is carefully limited to discerning whether there are genuine issues of material fact to be tried, not to deciding them. Its duty, in short, is confined at this point to issue-finding; it does not extend to issue-resolution." Gallo, 22 F.3d at 1224. However, "disputed legal questions . . . present nothing for trial and are appropriately resolved at summary judgment." Flair Broad. Corp. v. Powers, 733 F. Supp. 179, 184 (S.D.N.Y. 1990).

The moving party bears the initial burden of "informing the district court of the basis for its motion" and identifying the matter that "it believes demonstrate[s] the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. If the movant meets that burden, "the nonmoving party must come forward with

[4] Unless otherwise noted, this Memorandum Opinion and Order omits all alterations, omissions, emphasis, quotation marks, and citations in quoted text.

specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). In determining whether summary judgment is proper, a court must resolve all ambiguities and draw all reasonable inferences against the moving party. See id.; Brod v. Omya, Inc., 653 F.3d 156, 164 (2d Cir. 2011).

III.

The defendants, Detective Febus and the City, move for summary judgment dismissing the plaintiff's claims for violations of Section 1983 based on the alleged use of excessive force by Detective Febus, see ECF No. 113, 5-11, and deliberate indifference to Zeng's medical needs and conditions of confinement, id. at 11-15. The defendants also assert that Detective Febus is entitled to qualified immunity from Zeng's Section 1983 claims, id. at 15-17, and request that this Court decline to exercise supplemental jurisdiction over Zeng's remaining state law claims, id. at 19.

Because the plaintiff did not respond to the defendants' argument for summary judgment dismissing her Section 1983 claims, those claims were abandoned. See Banyon v. Sikorski, No. 17-cv-4942, 2021 WL 2156226, at *2 (S.D.N.Y. May 27, 2021) ("Such a failure to respond to arguments set forth in a moving party's brief is an adequate ground for a Court to deem the claim abandoned."); Brandon v. City of New York, 705 F. Supp. 2d 261,

268 (S.D.N.Y. 2010) ("In [the plaintiff's] brief, [the plaintiff] did not raise any arguments opposing Defendant's motion regarding these two claims. Accordingly, the Court deems [the plaintiff's] first and third claims abandoned."). Moreover, the plaintiff's counsel explicitly abandoned those claims at the argument on the motion, see Hearing Tr. at 10-11, and therefore those claims should be dismissed.

IV.

Zeng's remaining claims are for assault and battery based on New York state law. ECF No. 68 ¶¶ 166-167.

A district court may decline to exercise supplemental jurisdiction if "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c). "When all federal claims are eliminated before trial, the balance of factors to be considered -- including judicial economy, convenience, fairness, and comity -- typically points towards declining to exercise supplemental jurisdiction over any remaining state-law claims." Lawtone-Bowles v. City of New York, Dep't of Sanitation, 22 F. Supp. 3d 341, 352 (S.D.N.Y. 2014).

Having dismissed all of the plaintiff's federal claims, the claims over which this Court has original jurisdiction, declining to exercise supplemental jurisdiction over the state-law claims of assault and battery against Detective Febus and against the City of New York on a respondeat superior basis is appropriate. Id. at

352-53; see, e.g., Valencia ex rel. Franco v. Lee, 316 F.3d 299, 305 (2d Cir. 2003); In re Merrill Lynch Ltd. P'ships Litig., 154 F.3d 56, 61 (2d Cir. 1998); Staten v. Patrolmen's Benevolent Ass'n of City of N.Y., 282 F. Supp. 3d 734, 742-43 (S.D.N.Y. 2017). The plaintiff's assault and battery claims under state law against Detective Febus and against the City on a respondeat superior basis are therefore **dismissed without prejudice.**

CONCLUSION

The Court has considered all of the parties' arguments. To the extent not specifically addressed above, those arguments are either moot or without merit. For the foregoing reasons, the defendants' motion for summary judgment is **granted.** Zeng's Section 1983 claims alleging excessive force and deliberate indifference to unconstitutional conditions of confinement against Detective Febus are dismissed. Zeng's state-law claims for assault and battery against Detective Febus and the City of New York are **dismissed without prejudice.** The Clerk of Court is therefore directed to enter judgment dismissing this action. The Clerk is also directed to close all pending motions and to close this case.

SO ORDERED.

Dated: **New York, New York**
January 23, 2024

John G. Koeltl
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

XIAMIN ZENG,

Plaintiff,

19-cv-3218 (JGK)

- against -

MEMORANDUM OPINION AND ORDER

JOHN CHELL, ET AL.,

Defendants.

JOHN G. KOELTL, District Judge:

The plaintiff, Xiamin Zeng, brought this action pursuant to 42 U.S.C. § 1983 and New York state law against Detective Danielle Febus, Inspector John Chell, Detective Gary DeNezzo, Sergeant George Tavares, Officer Irwin Luerpon, Officer Erlene Wiltshire, Officer Christopher Robley, and the City of New York, alleging false arrest, excessive force, malicious prosecution, denial of a fair trial, abuse of criminal process, municipal liability, and denial of medical treatment.

The Court assumes familiarity with, and sets forth below only so much of, the factual background and procedural history of this case as is necessary to understand this decision.

On March 1, 2022, the Court granted in part and denied in part the defendants' motion to dismiss the complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). See Zeng v. Chell, No. 19-cv-3218, 2022 WL 624873, at *1, *11 (S.D.N.Y. Mar. 1, 2022). In a Memorandum Opinion and

Order dated January 23, 2024, the Court granted the defendants' motion for summary judgment and dismissed the remaining claims. See Zeng v. Chell, 2024 WL 244388, at *4 (S.D.N.Y. Jan. 23, 2024). The next day, the Clerk entered judgment closing the case. See ECF No. 129 (the "Judgment"). In a Memorandum Opinion and Order dated July 9, 2024 (the "Order"), the Court denied the plaintiff's motion for reconsideration. See Zeng v. Chell, 2024 WL 3360570, at *6 (S.D.N.Y. July 9, 2024).

The plaintiff initially appeared pro se. The plaintiff subsequently retained counsel, Sim & DePaola, LLP. On February 1, 2024, the plaintiff terminated counsel; the plaintiff is again proceeding pro se. See ECF No. 139. After this Court denied the plaintiff's motion for reconsideration, the Clerk sent notice of the Order to the plaintiff's former counsel, rather than to the plaintiff. See Suppl. Decl. in Support ("Suppl. Decl.") at 2-3, ECF No. 154. The plaintiff alleges that because of her lack of PACER access and failure to receive notice, she learned of the Order only in early April 2025 through a Google search. Id.

Aside from this action, the plaintiff has filed several other actions in this District, including against the New York City Housing Authority ("NYCHA") and Dana Augustin, a New York City Administration of Children's Services social worker. See Zeng v. New York City Hous. Auth., 2023 WL 4553416 (2d Cir. July

17, 2023) (the "NYCHA Action"); Zeng v. Augustin, No. 17-cv-9988, 2019 WL 1284274 (S.D.N.Y. Mar. 20, 2019) (the "Augustin Action"). The plaintiff alleges that WilmerHale has represented NYCHA since 2016 but represented the plaintiff in the Augustin Action, giving rise to a conflict of interest. See Exhibits to Suppl. Mot. ("Ex.") at 104-05, ECF No. 162; Suppl. Mot. at 5-7, ECF No. 163; Suppl. Reply in Support ("Suppl. Reply") at 8, ECF No. 166. However, the dockets in the NYCHA Action and the Augustin Action do not reflect that WilmerHale appeared in either case.

Alleging "excusable neglect" and "extraordinary circumstances" based on the plaintiff's former counsel's purported refusal to return files after counsel's termination and the Court's failure to provide notice of the Order to the plaintiff, the plaintiff now moves to vacate the Judgment and Order pursuant to Federal Rule of Civil Procedure 60(b). See Not. Of Mot. ("Mot.") at 4-5, ECF No. 152; Suppl. Decl. at 1-3; Reply in Support ("Reply") at 7, ECF No. 157. The plaintiff also alleges "excusable neglect" and "extraordinary circumstances" based on the plaintiff's former counsel's purported failure to use information obtained during discovery to oppose summary judgment, the defendants' alleged failure to disclose records, and a potential conflict of interest arising from WilmerHale's alleged past representations of the plaintiff and NYCHA. See Ex.

at 104-05; Suppl. Mot. at 5-7; Suppl. Reply at 8. For the following reasons, the plaintiff's motion is **denied**.

I.

Federal Rule of Civil Procedure 60(b) provides that a court may grant relief from a final judgment, order, or proceeding for any of six reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).[1] The Rule further provides that the motion "must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). Because "[Rule] 60(b) allows extraordinary judicial relief, it

[1] Unless otherwise noted, this Memorandum Opinion and Order omits all internal alterations, citations, footnotes, and quotation marks in quoted text.

is invoked only upon a showing of exceptional circumstances." Nemaizer v. Baker, 793 F.2d 58, 61 (2d Cir. 1986). Rules 60(b)(1) through (5) and Rule 60(b)(6) are "mutually exclusive," meaning that "any conduct which generally falls under the former cannot stand as a ground for relief under the latter." Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 393 (1993); Mandala v. NTT Data, Inc., 88 F.4th 353, 359 (2d Cir. 2023).

II.

The plaintiff asserts excusable neglect under Rule 60(b)(1) and extraordinary circumstances under Rule 60(b)(6) based on the conduct of her former counsel, the Court, and the defendants. Each of the plaintiff's arguments is addressed in turn.

A.

The plaintiff first contends that after terminating her counsel in February 2024, her former counsel refused to return files to her—including medical records allegedly documenting her injuries during the relevant time period and witness statements allegedly vital to her Section 1983 claims. The plaintiff argues that her former counsel's conduct impaired her ability to meet the deadline for filing an appeal pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A) and either amounts to "excusable

neglect" under Rule 60(b)(1) or "extraordinary circumstances" under Rule 60(b)(6).[2] See Mot. at 3.

Relief from an error by a party's attorney "is normally sought pursuant to Rule 60(b)(1) on the theory that such error constitutes mistake, inadvertence, surprise, or excusable neglect." Nemaizer, 793 F.2d at 62. However, "[w]here a party or attorney fails to act with diligence, he will be unable to demonstrate that his conduct constituted excusable neglect." McGowan v. Stanley, No. 22-cv-6971, 2024 WL 1116310, at *2 (S.D.N.Y. Mar. 13, 2024).

In this case, the plaintiff failed to act with diligence. After terminating her former counsel on February 1, 2024, the plaintiff promptly filed a motion for reconsideration, which was fully briefed by April 5, 2024. See ECF No. 144. While seeking reconsideration, the plaintiff could have raised the issue about her former counsel's alleged noncompliance or her inability to access files, but she failed to do so until over a year after filing the motion for reconsideration. The extensive delay demonstrates that the plaintiff failed to act diligently to

---

[2] "Where a party's Rule 60(b) motion is premised on grounds fairly classified as mistake, inadvertence, or neglect, relief under Rule 60(b)(6) is foreclosed." McGowan v. Stanley, No. 22-cv-6971, 2024 WL 1116310, at *3 (S.D.N.Y. Mar. 13, 2024). Because the plaintiff relies on excusable neglect, she cannot also seek relief under Rule 60(b)(6). For the sake of completeness, however, the plaintiff's Rule 60(b)(6) argument is addressed on the merits.

resolve the issue with her former counsel or obtain the files she purportedly needed. Because of the plaintiff's "[failure] to act with diligence," the plaintiff has failed to demonstrate that her former counsel's purported "refusal" to return files to the plaintiff constitutes "excusable neglect" that would justify vacatur under Rule 60(b)(1). McGowan, 2024 WL 1116310, at *2.

Rule 60(b)(6) is a catch-all provision that should be applied only when the movant demonstrates "extraordinary circumstances." Fed. R. Civ. P. 60(b)(6); Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 863-64 (1988); Ackermann v. United States, 340 U.S. 193, 199 (1950). In this case, the plaintiff has failed to show how the alleged lack of access to files prevented the plaintiff from litigating further or filing an appeal before the deadline for an appeal had passed. The plaintiff also had opportunities to raise the issue sooner but did not do so until more than a year after moving for reconsideration. Accordingly, the plaintiff did not demonstrate any "extraordinary circumstance" that would justify vacatur under Rule 60(b)(6). See United States v. Universal Mgmt. Servs., Inc., 191 F.3d 750, 757-58 (6th Cir. 1999) (concluding that counsel's "refus[al] to return files" did not amount to an extraordinary circumstance when "[the movant] was not without opportunity to seek [other] methods of relief or correction" earlier).

Moreover, the Court carefully explained why the defendants were entitled to summary judgment and why the plaintiff's motion for reconsideration was without merit. There is nothing in the plaintiff's current submissions that casts any doubt on the reasoning in those opinions.

B.

Second, the plaintiff alleges that this Court's failure to send her notice of the Order impeded her ability to file a timely appeal, which she claims amounts to either "excusable neglect" under Rule 60(b)(1) or an "extraordinary circumstance" under Rule 60(b)(6).[3] See Suppl. Decl. at 2-3. Specifically, because the July 9, 2024 Order denying the plaintiff's motion for reconsideration was not mailed to her and the plaintiff lacked PACER access, the plaintiff claims that she did not learn about the Order until April 2025 through a Google search—about nine months after the Order was issued. Id.

It is well-established that, pursuant to Federal Rule of Civil Procedure 77(d)(2), lack of notice of a court's order does not excuse a litigant's obligation to file a timely appeal. Stevens v. Schneiderman, No. 05-cv-10819, 2011 WL 6780583, at *5

[3] As with the plaintiff's first asserted ground for relief, because the plaintiff relies on Rule 60(b)(1) with respect to this second ground for relief, she cannot also seek relief under Rule 60(b)(6). For the sake of completeness, however, the plaintiff's Rule 60(b)(6) argument is also addressed on the merits.

(S.D.N.Y. Dec. 23, 2011) ("[L]ack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed by Federal Rule of Appellate Procedure 4(a)."); Scott v. White, 126 F. Supp. 3d 665, 675 (E.D. Va. 2014) (concluding that the pro se plaintiffs' purported lack of notice of the district court's order denying their motion for relief from judgment did not affect the time for appeal). Therefore, the Clerk's failure to give the plaintiff notice of the Order provides no basis for vacating the Judgment and Order.

More generally, "lack of written notice may not be used to justify [a movant's] lack of diligence or . . . extraordinary delay." Stevens, 2011 WL 6780583, at *5. In this case, the plaintiff admits that she learned of the Order in April 2025 through a Google search. The plaintiff's admission undermines her claim of "excusable neglect" or "extraordinary circumstances." There was no reason for the plaintiff to wait nine months to do an internet search to check on the status of her case. Therefore, the plaintiff's failure to act with reasonable diligence precludes her from seeking relief under Rule 60(b)(1) or Rule 60(b)(6).

C.

Third, the plaintiff argues that her former counsel's alleged failure to use information obtained in discovery to

oppose summary judgment constitutes "excusable neglect" under Rule 60(b)(1). See Suppl. Mot. at 7.

The negligence of a party's attorney is insufficient to justify vacatur under Rule 60(b)(1). See Nemaizer, 793 F.2d at 62 ("This is because a person who selects counsel cannot thereafter avoid the consequences of the agent's acts or omissions."). Therefore, the plaintiff's former counsel's alleged failure to use information is an inadequate basis for relief under Rule 60(b)(1).

Furthermore, the alleged discovery does not respond to the specific findings that the Court made in granting the defendants' motion for summary judgment and denying the motion for reconsideration. Therefore, the alleged discovery provides no basis for relief.

D.

Fourth, the plaintiff argues that the defendants' alleged failure to disclose records "prevented fair adjudication" of her claims in this action. See Suppl. Mot. at 3, 7.

Because the plaintiff's claim concerns alleged "fraud, misrepresentation, or misconduct" by "the opposing party," the plaintiff's claim is properly analyzed under Federal Rule of Civil Procedure 60(b)(3). Rule 60(b)(3) requires the movant to provide "clear and convincing evidence of material misrepresentations and cannot serve as an attempt to relitigate

the merits." Fleming v. N.Y. Univ., 865 F.2d 478, 484 (2d Cir. 1989). A movant must also "show that the conduct complained of prevented the moving party from fully and fairly presenting [the party's] case." In re PBS Foods, LLC, 718 F. App'x 89, 90 (2d Cir. 2018).

In this case, the plaintiff has failed to satisfy her burden under Rule 60(b)(3). As an initial matter, the plaintiff refers conclusorily to the "[d]efendants' failure to disclose records" and cites an unattached "Exhibit I" as evidence of her claim. Suppl. Mot. at 6-7. Construing the plaintiff's argument liberally, to the extent that the exhibit attached to ECF No. 157 as Exhibit C is what is referred to as "Exhibit I," the plaintiff alleges that the defendants' alleged non-disclosure of the purported fact that the defendants had received HIPAA release forms from the plaintiff—"leads to a misperception that [the plaintiff] had no medical records to support [her] claims." Id. at 3, 7; Ex. C to ECF No. 157. However, there is no evidence that the alleged non-disclosure of records "prevent[ed] [her] from fully and fairly presenting [her] case." In re PBS Foods, LLC, 718 F. App'x at 90. The plaintiff was able to submit any of her medical records in opposition to the defendants' motion for summary judgment or in support of the motion for reconsideration. The Court carefully considered the plaintiff's claims, and the plaintiff has failed to show how her medical

records would have responded to the specific issues that the Court decided on the motions.

Moreover, aside from alleging the defendants' failure to disclose, the plaintiff has provided no evidence to demonstrate how the alleged non-disclosure constituted "at least negligence." Adidas Am., Inc. v. Thom Browne, Inc., 742 F. Supp. 3d 352, 365 (S.D.N.Y. 2024); see also Crispin v. Rodriguez, No. 21-cv-883, 2023 WL 1113536, at *2 (2d Cir. Jan. 31, 2023) (concluding that the moving party failed to prove fraud and misrepresentation because he did not meet "the clear-and-convincing-evidence burden of showing that defense counsel actively misled him"). The one document attached to the plaintiff's papers that references discovery is an email thread from 2020 between the plaintiff and counsel for the defendants, which reflects that the defendants did respond to the plaintiff's document requests and interrogatories. Ex. B to ECF No. 157. Therefore, the plaintiff has failed to establish that the defendants' alleged conduct warrants relief under Rule 60(b)(3).

E.

Fifth, the plaintiff contends that WilmerHale's purported past representations of her in the Augustin Action and of NYCHA in the NYCHA Action created a potential conflict of interest

that justifies relief under Rule 60(b)(6). See Ex. at 104-05; Suppl. Mot. at 3, 5, 6-7.

However, there is no evidence that WilmerHale ever represented the plaintiff in any action, or NYCHA in the NYCHA Action. In any event, there is no indication that any alleged conflict in two separate cases bears any relationship to this case. WilmerHale never represented the plaintiff or any defendants in this case. Therefore, no relevant conflict of interest amounts to "extraordinary circumstances" to justify relief under Rule 60(b)(6) in this case.

III.

The plaintiff includes in her Rule 60(b) motion a string of cases that are either incorrectly cited or do not exist. See Reply (ECF No. 157) at Table of Authorities, 10, 12 (referring to "Clavizzao v. United States, 2023 U.S. Dist. LEXIS 123456 (S.D.N.Y. July 15, 2023)"; "Cody v. Hillard, 139 F.3d 49 (2d Cir. 1998)"; "Saunders v. Christian, 2007 U.S. Dist. LEXIS 35891 (S.D.N.Y. May 16, 2007)"; "Smith v. NYC, 2022 U.S. Dist. LEXIS 67890 (S.D.N.Y. Mar. 15, 2022)"; "Johnson v. Corr. Dep't, 2021 U.S. Dist. LEXIS 45678 (S.D.N.Y. Apr. 20, 2021)"; and "Brown v. Doe, 2023 U.S. Dist. LEXIS 12345 (S.D.N.Y. Feb. 10, 2023)"). It is unclear whether this is another instance of the use of artificial intelligence. Were it not for the plaintiff's pro se

status and the judgment dismissing this case, a further inquiry would be appropriate.

CONCLUSION

The Court has considered all of the arguments raised by the parties. To the extent not specifically addressed, the arguments are either moot or without merit. For the foregoing reasons, the plaintiff's motion to vacate the Judgment and Order is **denied**. The Clerk is directed to close all pending motions.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The Clerk is directed to mail a copy of this Memorandum Opinion and Order to the plaintiff and to note mailing on the docket.

SO ORDERED.

Dated: **New York, New York**
July 15, 2025

John G. Koeltl
United States District Judge

APPENDIX F

Proof of $605 Appellate Filing Fee Payment

August 5, 2025

U.S. District Court

New York Southern - Manhattan

Receipt Date: Aug 5, 2025 10:52AM

XIAMIN ZENG

Rcpt. No: 42070 | Trans. Date: Aug 5, 2025 10:52AM | Cashier ID: #SS (6367)

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
203	Notice of Appeal/Docketing Fee		1	605.00	605.00

CD	Tender			Amt
CH	Check	#75502	08/5/2025	$605.00
			Total Due Prior to Payment:	$605.00
			Total Tendered:	$605.00
			Total Cash Received:	$0.00
			Cash Change Amount:	$0.00

Comments: 19CV03218 JGK KHP

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A $53 fee will be charged for a returned check.

CUSTOMER'S RECEIPT

UNITED STATES POSTAL SERVICE®

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

NOT NEGOTIABLE

Pay to Clerk, U.S. Court of Appeals. 2nd Cir.

Address 40 Foley Square

New York. NY 10007

KEEP THIS, RECEIPT FOR YOUR RECORDS

Serial Number	Year, Month, Day	Post Office	Amount	Clerk
38028075502	2025-08-05	100133	$605.00	09

APPENDIX G

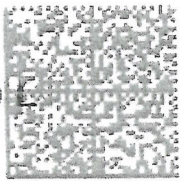
Postmarked Envelope Confirming Simultaneous Mailing of Denial Order and Mandate

February 13, 2026

CLERK'S OFFICE
U.S. COURT OF APPEALS
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, NY 10007

OFFICIAL BUSINESS

NEW YORK NY 100
13 FEB 2026 PM 10
FIRST-CLASS



US POSTAGE PITNEY BOWES
ZIP 10007 $ 000.74⁰
02 7W
0008043023 FEB 13 2026

10002-193111

APPENDIX H

Administrative Complaint to Chief Clerk
Catherine O'Hagan Wolfe — August 25–28, 2025

Including Letter from New York State Attorney General's Office
August 14, 2025

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

FORMAL COMPLAINT REGARDING SYSTEMATIC CASE ADMINISTRATION FAILURES

TO: Catherine O'Hagan Wolfe, Clerk of Court
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

RE: Zeng v. Chell, Case No. 25-1956

FROM: Xiamin Zeng, Plaintiff-Appellant, Pro Se

I. INTRODUCTION

I hereby submit this formal complaint requesting immediate Chief Clerk intervention regarding multiple, systematic administrative failures in my appellate case that have compromised proper case administration and threaten the integrity of judicial proceedings.

II. FACTUAL BACKGROUND

Case Filing: Notice of Appeal filed August 5, 2025.
Appellant: Xiamin Zeng, proceeding pro se.
Nature of Case: Civil rights action improperly classified as "Prison Rights."

III. SYSTEMATIC CASE MANAGEMENT FAILURES

A. Eight-Day Pattern of Inconsistent Guidance by Case Manager Ms. Kaylor

Between August 15-22, 2025, I was subjected to daily, contradictory filing requirements instead of receiving complete guidance upfront: • August 15: Filed Form C with attachments, Form D-P package, and Pro Bono Motion; same afternoon required to resubmit Form C and Form D-P package. • August 18: Required to resubmit Form C and Form D-P package (third submission); afternoon required to forward original August 15 submission. • August 19: Required to add Notice of Appearance. • August 20: Required to add Financial Affidavit and Form D-P Certificate of Service. • August 21: Required to add Form T-1080. • August 22: Required to combine Pro Bono Motion with Form T-1080; requested to modify substantive relief provisions.

B. Additional Case Management Deficiencies

1. Contradictory Legal Guidance: Initially stated Form C was not required, directly contradicting court website requirements; indicated no Appellant's Brief timeline exists, contrary to established 40-day rule from docketing notice.
2. Exceeding Administrative Authority: Suggested adding pro bono counsel request to substantive relief provisions, exceeding administrative scope.
3. Email Processing Inconsistencies: Claimed inability to receive documents sent to prosecases@ca2.uscourts.gov (her department, August 15, 9:30 AM); immediately confirmed receipt when same Pro Bono Motion was sent to multiple addresses including civilcases (August 15, 10:30 AM); instructed appellant not to copy civilcases email address.
4. Excessive Documentation Requirements: Form C and Form D-P package submitted four separate times; resulted in opposing counsel requesting cessation of duplicate submissions.

IV. NEW CASE DIVISION ADMINISTRATIVE FAILURES

A. Processing Delays: Case Number Assignment: 8-day delay despite repeated telephone inquiries; Docketing Notice: 14-day delay (received August 19, 2025); Required Forms: Delivered in three separate mailings on August 24, 2025. B. Incorrect Case Classification: Case improperly classified as "Prison Rights"; should be classified as "Civil Rights"; appellant is not incarcerated; classification is factually incorrect and may affect legal analysis framework. C. Incorrect Defendant Counsel Information: Court records incorrectly list New York State Attorney General as counsel for defendant Inspector Chell; error was so significant that the Attorney General's Office wrote directly to this Court on August 14, 2025, requesting removal as counsel; AGNYS clarified that Inspector Chell is a City of New York employee represented by NYC Law Department.

V. CIVIL CASES DIVISION RESPONSE

On August 25, 2025, I contacted the Civil Cases Division regarding these documented issues. Division staff confirmed that all required documents were complete and that the excessive resubmission requirements were unnecessary. Staff further indicated that Case Manager assignments are handled at the Clerk Office level, confirming that Chief Clerk intervention is the appropriate resolution path for these systematic administrative problems.

VI. INDEPENDENT VERIFICATION

The severity and systematic nature of these administrative failures is independently confirmed by the attached letter from the New York State Attorney General's Office to Chief Clerk Wolfe dated August 14, 2025, formally requesting removal as counsel for defendant Inspector Chell and clarifying proper representation.

VII. LEGAL STANDARD

Federal appellate courts have a fundamental obligation to ensure proper case administration and equal access to justice for pro se litigants. The documented pattern of inconsistent guidance, processing delays, and factual errors in case records violates basic due process principles and undermines confidence in judicial administration.

VIII. RELIEF REQUESTED

Based on the systematic nature of these administrative failures affecting multiple court divisions, I respectfully request the following immediate corrective actions:

A. Case Management: 1. Assignment of experienced case manager with demonstrated competency in appellate procedures; 2. Written confirmation of all filing requirements and deadlines to prevent future inconsistencies. B. Case Record Corrections: 1. Correction of case classification from "Prison Rights" to "Civil Rights"; 2. Correction of defendant counsel information per AGNYS official request; 3. Confirmation of accurate brief filing deadlines given delayed and incomplete documentation. C. Administrative Review: 1. Comprehensive review of case processing procedures to prevent similar issues; 2. Training protocols for case management staff regarding pro se appellant assistance; 3. Written policies for consistent document processing and communication.

IX. CONCLUSION

These documented systematic failures represent a serious breakdown in case administration requiring immediate Chief Clerk intervention. The problems span multiple court divisions and have been independently verified by external parties. Civil Cases Division staff have confirmed both the completeness of my documentation and the appropriateness of Chief Clerk level review for these issues. Such administrative deficiencies not only prejudice individual litigants but undermine the integrity of the appellate process itself. I respectfully submit that immediate corrective action is necessary to ensure proper case administration and maintain public confidence in the federal judiciary.

VERIFICATION

I hereby certify under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Respectfully,



Xiamin Zeng
Plaintiff-Appellant, Pro Se
110 Columbia Street, Apt. 1A
New York, NY 10002
amyzane77@gmail.com
(929) 257-1509

Date: August 25, 2025

ATTACHMENTS:

Exhibit A: Letter from New York State Attorney General's Office to Chief Clerk Catherine O'Hagan Wolfe dated August 14, 2025

Exhibit B: Original case management complaint email sent to civilcases@ca2.uscourts.gov on August 25, 2025, at 10:30 AM

Office of the New York State Attorney General

Letitia James
Attorney General

August 14, 2025

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *Zeng v. Chell*, No. 25-1956

Dear Ms. Wolfe:

The Office of the Attorney General inadvertently is listed as counsel for defendant-appellant Inspector John Chell. This individual is a City of New York employee who was represented by the City's Law Department in the district court. Accordingly, we respectfully request that you remove this Office as counsel.

Respectfully submitted,
/s/ Oren L. Zeve
Oren L. Zeve
Managing Assistant Solicitor General

cc: NY City Law Department (*by ECF*)

Xiamin Zeng (*by USPS mail*)
Apt. 1A
110 Columbia Street
New York, NY 10002

Gmail

Amy Zane <amyzane77@gmail.com>

Zeng v. Chell, Case No. 25-1956 - Request for Supervisor Regarding Case Management Issues

Amy Zane <amyzane77@gmail.com>
To: <civilcases@ca2.uscourts.gov>
Bcc: <miaco602@gmail.com>

Mon, Aug 25 at 10:30 AM

Dear Supervisor of the Court,

I am Xiamin Zeng, pro se appellant in Zeng v. Chell, Case No. 25-1956. I request supervisory review of ongoing case management issues with Ms. Kaylor.

Issue Summary: Over the past week, I have received inconsistent daily filing requirements instead of complete guidance upfront:

- **8/15**: Filed Form C with attachments, Form D-P package, and Pro Bono Motion; same afternoon required to resubmit Form C and Form D-P package
- **8/18**: Required to resubmit Form C and Form D-P package again; afternoon required to forward original August 15 submission
- **8/19**: Required to add Notice of Appearance
- **8/20**: Required to add Financial Affidavit and Form D-P Certificate of Service
- **8/21**: Required to add Form T-1080
- **8/22**: Required to combine Pro Bono Motion with Form T-1080; requested to modify relief provisions

Additional Concerns:

- Initially stated Form C was not required, contradicting court website requirements
- Indicated no Appellant's Brief timeline exists, contrary to standard 40-day rule from docketing notice
- Suggested adding pro bono counsel request to substantive relief provisions, exceeding administrative scope
- Directed case classification correction from "Prison Rights" to "Civil Rights" to District Court, causing additional delays
- **Email handling inconsistency**: Claimed not to receive documents sent to prosecases@ca2.uscourts.gov (her department, 8/15 9:30 AM), but immediately confirmed receipt when Pro Bono Motion was sent to multiple addresses including civilcases (8/15 10:30 AM). She instructed me not to CC civilcases email.
- **Excessive submissions**: Form C and Form D-P package submitted four times total, resulting in opposing counsel requesting cessation of duplicates

This inconsistent guidance has disrupted case preparation and created procedural confusion. I have completed all filings by following court rules directly.

Request: Please assign an experienced case manager to ensure proper case administration.

Thank you for your attention to this matter.

Respectfully,
Xiamin Zeng
Plaintiff-Appellant, Pro Se
amyzane77@gmail.com
(929) 257-1509

9589 0710 5270 1800 1381 98

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at *www.usps.com®*.

New York, NY 10007

OFFICIAL USE

Certified Mail Fee $5.30	0013
$	$4.40
Extra Services & Fees *(check box, add fee as appropriate)*	10
☐ Return Receipt (hardcopy)	$ $0.00
☐ Return Receipt (electronic)	$ $0.00
☐ Certified Mail Restricted Delivery	$ $0.00
☐ Adult Signature Required	$ $0.00
☐ Adult Signature Restricted Delivery	$
Postage $1.90	
$	
Total Postage and Fees $11.60	08/26/2025
$	

Postmark Here

CHURCHBOCKER STATION POST OFFICE
AUG 26 2025
NEW YORK, NY 10002-9998

Sent To C. O'Hagan Wolfe. Clerk, 2nd Circuit Court of Appeals

Street and Apt. No., or PO Box No. 40 Foley Square

City, State, ZIP+4® New York. NY. 10007

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

USPS Tracking Confirmation

Tracking Number: 9589 0710 5270 1800 1381 98

Latest Update: Your item was delivered to the front desk, reception area, or mail room at 12:58 pm on August 28, 2025 in NEW YORK, NY 10007.

Status: Delivered, Front Desk/Reception/Mail Room; NEW YORK, NY 10007; August 28, 2025, 12:58 pm

Status: Delivered, Front Desk/Reception/Mail Room
NEW YORK, NY 10007
August 28, 2025, 12:58 pm