

Docket # _____

Supreme Court of the United States

Sai v. USPS

**On Petition for Writ of *Certiorari* to the
United States Court of Appeals for the District of Columbia**

Application to Chief Justice John G. Roberts, Jr.

Sai¹, *petitioner pro se*

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Your Honor —

For the reasons set forth below, I respectfully request that I be granted an extension of 60 days for time to file a petition for *certiorari* (or related motions), a stay of the D.C. Circuit's order, and electronic copies of certain motions in this Court's archives so that I may prepare my case.

Furthermore, due to procedural catch-22 of the questions I wish to certify to this Court, I ask that I be given waiver of fees, and appointed *pro bono* counsel, for the limited purpose of representing me before this Court in this matter, *without* filing an IFP petition affidavit, as there is no other means by which my rights can be preserved without mooting my case.

I am not seeking merely personal relief. Addressing these questions would seriously affect privacy and

¹ Note: "Sai" is my *full* legal name.

access to the courts for poor litigants *nationwide*, and is strictly a principled matter of law.

The questions I seek to certify, which do not depend on any facts in the case below, are these:

1. Is an affidavit in support of an IFP petition — or the petition itself — a *judicial* document, or merely a *ministerial* one?
2. Is a decision to approve or deny an IFP petition a *judicial* or *ministerial* action?
3. Supposing *arguendo* that it is judicial, does the general public interest in access to judicial documents outweigh the personal privacy interests in information in an IFP affidavit?
4. Must a person seeking to exercise their rights under 28 USC § 1915 or 18 USC § 3006A disclose their finances (and/or their spouse's) to the public and/or opposing parties?

In *Boston Herald, Inc. v. John Connolly*, 321 F.3d 174 (2003), the 1st Circuit held that an affidavit under the CJA, 18 USC § 3006A, is not a judicial document in the first place — and that even if it were, the interest in privacy and access to the courts would outweigh the general presumption favoring public availability. This was held even though *Connolly* was a "highly publicized criminal trial"; CJA affidavits are *more* restrictive and have *fewer* rights to privacy than IFP affidavits; and a major newspaper sued for release of the affidavits, claiming a public interest in their content.

In the captioned case, the D.C. Circuit ordered that I may not file under seal an affidavit in support of an IFP petition, and must either file it on the public docket or pay the court's filing fee.² This was upheld on panel reconsideration; *en banc* reconsideration was denied. The *per curiam* panel order was based only on case law stating a *general* presumption in favor of the public availability of *judicial* documents.³ Even

² Any response to this order would moot the questions I seek to certify and waive the rights I ask this Court to protect (in accord with the 1st Circuit). As such, this interlocutory appeal cannot be delayed until the final outcome in the lower court, even though it does not determine the outcome of the FOIA matter at issue below.

³ The panel order cites only two cases in denying my request. The first is *Johnson v. Greater Se. Cmty. Hosp. Corp.*, 951 F.2d 1268, 1277 (D.C. Cir. 1991). *Johnson* only supports a general favor for public access to judicial records.

upon reconsideration, the Circuit simply did not address either issue held by the 1st Circuit to be determinative in *Connolly*, nor did any of the cases it cited in its initial or reconsidered orders (nor any cases cited in *those*). Nor is there any public interest in my finances.

This Court's rules also require that a petitioner either pay this Court's filing fee or file an affidavit of their personal finances on the public record; it has no provision for seal of affidavits. Since 2003, this Court has been asked by motion for permission to file an IFP affidavit under seal 12 times⁴, and has denied the motion each time. Twice⁵, it has been asked to grant a motion to file IFP *without* an affidavit, and has granted the motion each time. I do not have access to the motions nor the substance of the response (only the minimal online docket entries), so do not know whether any of these prior motions relied on *Connolly* or made similar arguments.

With all due respect, I submit to Your Honor that this Court's own rule that an IFP affidavit must be public, for the reasons held in *Conolly*, is unconstitutional. To my knowledge, this Court has never directly considered or addressed the questions above, which were addressed by the 1st Circuit.

I believe that requiring me to file an IFP affidavit under any condition other than under seal and *ex parte* violates my Constitutional rights to privacy, equal protection under the law, and access to the courts. It conditions the availability to even *seek* IFP status (and appointment of counsel) on a major waiver of privacy rights, both of the would-be IFP petitioner and even of their *non-party* spouse — without any countervailing public interest, and when the affidavit is not even a judicial document.

The second citation is *In re: Schum*, No. 13-1041 (May 31, 2013). The *Schum* court gave only a brief *per curiam* order, also referencing *Johnson*, as well as *Wolfe v. Graham*, No. 95-7137 (D.C. Cir. Dec. 22, 1995) (for which the docket available on PACER gives no details of substantive argument nor availability of the underlying documents) and *Sturdza v. United Arab Emirates*, No. 07-7034 (D.C. Cir. Oct. 23, 2007) (a short *per curiam* referencing *Johnson* and *Wolfe*).

⁴ Motions 03M60, 07M52, 07M57, 09M70, 09M78, 09M81, 10M98, 10M99, 11M4, 11M58, 11M70 and 13M33

⁵ Motions 07M5 and 09M38

I cannot file an affidavit in support of an IFP petition to this Court without mooting my case; nor can I afford to pay this Court's filing fees, let alone a paid lawyer. Even if this Court were to *determine* my IFP status based on a one-time grant of seal, that would *also* moot my case, because this Court would then not reach the questions I seek to certify above.

Unfortunately, this means that I am stuck in a catch-22 situation which completely deprives me of access to *pro bono* counsel with which to argue the above questions *about* IFP status to this Court.

Therefore, I apply to Your Honor for the following relief:

1. I ask that I be granted an extension of 60 days, in addition to the normal 90 days from the denial of my request for *en banc* reconsideration, together with a stay of the D.C. Circuit's 30-day order, so that I have more time to prepare my case without risking dismissal.⁶
2. I ask that Your Honor direct the Clerk of the Court to send me, by email, PDF copies of all papers in the 14 motions listed in the footnotes above, so that I may understand this Court's prior history on this matter and have access to materials necessary to prepare my case.

I cannot readily visit the Court in person, and these documents are not available by any other means. Access to prior documents that address the same question is a basic necessity of access to the courts, and I cannot properly prepare even a motion *pro se* without these records.

3. I ask that I be permitted to file a petition for *certiorari* without paying this Court's filing fee or the lower court's fee for notice of appeal; *without* filing an affidavit of my finances; and *without* this Court actually determining my IFP status (as that would itself moot my case).

All I can offer this Court in support is the following: I swear under penalty of perjury, in accordance

⁶ I asked the D.C. Circuit for stay pending this appeal on June 27th (attached), but have not received a response yet.

with 28 USC § 1746, that I believe in good faith that I qualify for IFP status under 28 USC § 1915, because I can neither afford counsel for this appeal nor afford the costs associated with filing a paid petition for *certiorari*.

As explained above, I cannot provide this Court with a supporting affidavit, nor can this Court even determine my IFP status, without mooting my case.

4. I ask that I be appointed *pro bono* counsel to represent me on this matter before this Court.⁷

If Your Honor cannot grant the relief requested above (e.g. if such relief can only be obtained by motion or by petition for an extraordinary writ), then I ask that I at least be appointed *pro bono* counsel to represent me for all such motions, petitions, etc.

In this exceptional circumstance, this Court's response to a motion to file an IFP affidavit under seal would effectively grant *certiorari* and simultaneously *rule on the questions I seek to certify*. This should instead be decided upon merits brief prepared by effective counsel; whether I have a right to file an affidavit in support of an IFP motion under seal is the *central issue* I seek to present to this Court. Without relief #4, I will be denied effective access to counsel to argue it.

Respectfully submitted today, July 13, 2014,

Sai, *petitioner pro se*

⁷ I do not ask this Court to extend the appointment to the underlying case, as that addresses a wholly unrelated matter (namely, improper agency action under the FOIA). That decision should be made after the questions above are heard by this Court, so that the lower court can proceed with IFP decision making consistent with this Court's decision, which would include (if my petition is granted) evaluation of a sealed *ex parte* affidavit of my finances.