

**United States Court of Appeals
District of Columbia Circuit**

333 Constitution Avenue, NW Washington, DC 20001-2866
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Sai
Petitioner

v.

Case Number: 14-1005

United States Postal Service (USPS)
Respondent

Petition for reconsideration or reconsideration *en banc*

In accordance with FRAP Rules 35 and 40, I hereby respectfully request a reconsideration or reconsideration *en banc* of the panel decision in document 1492737. This *per curiam* order involves a "question of exceptional importance" as defined in 35(b)(1)(B), because it conflicts with the authoritative decision of the 1st Circuit in *Boston Herald, Inc. v. John Connolly*, 321 F.3d 174 (2003). Reconsideration is also merited because the decision (and its citations) does not address the substantive questions necessary to decide the underlying motion.

The questions I ask the Court to address are:

1. Is an affidavit in support of an IFP petition, or the petition itself, a *judicial* document, or merely a *ministerial* one? Similarly, is a decision to approve or

deny an IFP petition a *judicial* or *ministerial* action?

2. Assuming *arguendo* that it is judicial, does the general public interest in access to judicial documents outweigh the privacy interest in the highly sensitive (and normally protected) information in an IFP affidavit?
3. Should a person seeking to exercise their rights under 28 USC § 1915 or 18 USC § 3006A be required to disclose their personal finances (and their spouse's) to the public and/or to the opposing party?

My own argument is covered in documents 1474820 and 148266. I am not able to elaborate further without aid of counsel, so I attach them and request such aid.

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.

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*).

As far as I am aware, neither the panel decision, nor any case referenced by it (or any case referenced by *those* cases), nor any other opinion by this circuit, addresses any of the questions above. I believe that these questions *must* be addressed in order to rule against my motion.

The panel decision conflicts with the 1st Circuit's decision in *Connolly*, which granted seal and clearly addresses and rebuts the general presumption in favor of public access to judicial proceedings. *Connolly* held that IFP affidavits are not judicial documents in the first place, and that even if they were, they would be entitled to seal, as the privacy interest in them strongly outweighs any marginal public interest. This was so even in the context of highly publicized criminal trial, in which the public's interest in the defendant would, if anything, be at its zenith.

If the Court chooses not to grant my motion for reconsideration (or if granted, does not grant my underlying motion for filing an an IFP affidavit under seal and *ex parte*), I request under FRAP Rule 2 that in the interests of justice, the Court waive its usual rules, appoint me *pro bono* counsel for the specific purpose of arguing (and, if necessary, appealing) this issue, permit re-filing by counsel, and suspend

order 1492737 pending resolution thereof.

Order 1492737 effectively precludes me from receiving the benefit of counsel to argue this issue better than I am able to alone. The provision of court appointed counsel is itself dependent on the resolution of this argument, and choosing to waive either my right to privacy or to seek IFP status (as the order mandates) would moot the matter. This creates a unique catch-22 situation that merits a waiver of rules (or *mandamus*) for appointment of *pro bono* counsel to argue this matter, as there is no other remedy.

The decision irreparably prejudices my case by depriving me of access to counsel unless I waive my right to privacy in sensitive financial and personal disclosures, which I am unwilling to do. The rights involved are substantial (privacy; access to courts and counsel), and the questions are a matter of first impression in this circuit that have been answered (in my favor) by the 1st Circuit.

Respectfully submitted,

Sai, *petitioner pro se*

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Circuit Rule 28(a)(1)(A) statement: All parties appearing in this court are listed in the caption. There are no intervenors or *amici*.