

**U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:10-cv-24338-MGC**

Marshall v. United States of America
Assigned to: Judge Marcia G. Cooke
Referred to: Magistrate Judge William C. Turnoff
Cause: 28:2671 Federal Tort Claims Act

Date Filed: 12/07/2010
Jury Demand: None
Nature of Suit: 360 P.I.: Other
Jurisdiction: U.S. Government Defendant

Plaintiff**Andrew D. Marshall**

represented by **Andrew D. Marshall**
78814-004
Miami FDC
Federal Detention Center
Inmate Mail/Parcels
Post Office Box 019120
Miami, FL 33101
PRO SE

V.

Defendant**United States of America**

represented by **Charles S. White**
United States Attorney's Office
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/07/2010	<u>1</u>	Original COMPLAINT against United States of America. Filing fee \$ 350.00. IFP Filed, filed by Andrew D. Marshall. (Attachments: # <u>1</u> Civil Cover Sheet)(yha) (Entered: 12/07/2010)
12/07/2010	<u>2</u>	Judge Assignment RE: Electronic Complaint to Judge Marcia G. Cooke (yha) (Entered: 12/07/2010)
12/07/2010	<u>3</u>	MOTION for Leave to Proceed Without Payment of Fees by Andrew D. Marshall. (yha) (Entered: 12/07/2010)
12/20/2010	<u>4</u>	Clerks Notice of Receipt of Filing Fee received on 12/20/2010 in the amount of \$ 350.00, receipt number FLS11389 (jcy) (Entered: 12/20/2010)
12/28/2010	<u>5</u>	ENDORSED ORDER denying as moot <u>3</u> Plaintiff's Motion for Leave to Proceed in forma pauperis, in light of <u>4</u> Civil Filing Fee paid. Signed by Judge Marcia G. Cooke on 12/28/2010. (rss) (Entered: 12/28/2010)
12/28/2010	<u>6</u>	Clerks Notice of Receipt of Filing Fee received on 12/28/2010 in the amount of \$ 5.00, receipt number FLS 11776 (jcy) (Entered: 12/29/2010)
01/13/2011	<u>7</u>	ORDER REFERRING CASE to Magistrate Judge Ted E. Bandstra for non-dispositive Pretrial Proceedings. Signed by Judge Marcia G. Cooke on 1/13/2011. (tm) (Entered: 01/13/2011)
01/13/2011	<u>8</u>	Order Requiring Joint Scheduling Report. Signed by Judge Marcia G. Cooke on 1/13/2011. (tm) (Entered: 01/13/2011)

01/13/2011	<u>9</u>	ORDER OF INSTRUCTIONS TO PRO SE LITIGANT. Signed by Judge Marcia G. Cooke on 1/13/2011. (tm) (Entered: 01/13/2011)
03/21/2011	<u>10</u>	Summons Issued as to United States of America, by serving Attorney General. (jcy) (Entered: 03/21/2011)
04/01/2011	11	Case Reassignment of Paired Magistrate Judge pursuant to Administrative Orders 2010-145 and 2011-18 to Magistrate Judge William C. Turnoff. Magistrate Judge Ted E. Bandstra no longer assigned to case. (dm) (Entered: 04/08/2011)
06/27/2011	<u>12</u>	MOTION for Extension of Time to File Answer RE: Complaints re <u>1</u> Complaint by United States of America. (Attachments: # <u>1</u> Text of Proposed Order)(White, Charles) (Entered: 06/27/2011)
06/27/2011	13	ORDER granting in part and denying in part <u>12</u> Motion for Extension of Time to respond to Complaint. Defendant shall have an additional 20 days, or until July 18, 2011, within which to respond to the Complaint. Signed by Magistrate Judge William C. Turnoff on 6/27/11. (lml) (Entered: 06/27/2011)
06/28/2011		Reset Answer Due Deadline: United States of America response due 7/18/2011. See DE 13 (tp) (Entered: 06/28/2011)
07/14/2011	<u>14</u>	ANSWER and Affirmative Defenses to Complaint by United States of America.(White, Charles) (Entered: 07/14/2011)
08/29/2011	<u>15</u>	NOTICE of Compliance by United States of America re <u>8</u> Order Requiring Joint Scheduling Report (Attachments: # <u>1</u> Appendix (JSR, attached schedule, proposed Scheduling Order, and Magistrate election form))(White, Charles) (Entered: 08/29/2011)
09/12/2011	<u>16</u>	ORDER REASSIGNING CASE to Judge Kathleen M. Williams for all further proceedings, Judge Marcia G. Cooke no longer assigned to case. Signed by Judge Marcia G. Cooke on 9/9/2011. (vp) (Entered: 09/12/2011)
09/29/2011	<u>17</u>	Order Setting Schedule, Requiring Mediation, Referring Certain Matters to Magistrate Judge, and Establishing Pre-Trial Procedures (Jury Trial set for 1/14/2013 before Judge Kathleen M. Williams., Calendar Call set for 1/8/2013 11:00 AM in Miami Division before Judge Kathleen M. Williams., Amended Pleadings due by 10/30/2011., Discovery due by 9/21/2012., Expert Discovery due by 9/21/2012., Joinder of Parties due by 10/30/2011., Mediation Deadline 10/19/2012., In Limine Motions due by 11/16/2012., Dispositive Motions due by 9/21/2012., Pretrial Stipulation due by 12/3/2012.). Signed by Judge Kathleen M. Williams on 9/29/2011. (jcy) (Entered: 09/30/2011)
10/14/2011	<u>18</u>	FIRST MOTION to Produce by Andrew D. Marshall. (yha) (Entered: 10/14/2011)
10/20/2011	<u>19</u>	MOTION for Leave to Amend <u>1</u> Complaint (Responses due by 11/7/2011), and thereafter MOTION to Stay Action by Andrew D. Marshall. (yha) (Entered: 10/20/2011)
10/26/2011	<u>20</u>	RESPONSE in Opposition re <u>19</u> MOTION to Amend/Correct <u>1</u> Complaint MOTION to Stay filed by United States of America. (White, Charles) (Entered: 10/26/2011)
11/01/2011	21	ORDER denying <u>19</u> Plaintiff's Motion for Leave to Amend Complaint and Thereafter to Stay Action for failure to comply with Local Rule 15.1 of the United States District Court for the Southern District of Florida which requires the moving party to attach the amendment to the motion. Signed by Magistrate Judge William C. Turnoff on 11/1/11. (lml) (Entered: 11/01/2011)
11/22/2011	<u>22</u>	MOTION to Stay Case by Andrew D. Marshall. Responses due by 12/9/2011 (jua) (Entered: 11/23/2011)
12/07/2011	<u>23</u>	RESPONSE in Opposition re <u>22</u> MOTION to Stay filed by United States of America. (Attachments: # <u>1</u> Affidavit (Declaration of Dr. Thomas))(White, Charles) (Entered: 12/07/2011)
12/08/2011	<u>24</u>	Order Denying Motion to Stay. Signed by Judge Kathleen M. Williams on 12/7/2011. (jcy) (Entered: 12/08/2011)

12/28/2011	<u>25</u>	MOTION for Reconsideration re <u>24</u> Order Denying Motion to Stay by Andrew D. Marshall. (jua) (Entered: 12/28/2011)
01/18/2012	<u>26</u>	ORDER OF RECUSAL. Judge Kathleen M. Williams recused. Case reassigned to Judge Marcia G. Cooke for all further proceedings. Signed by Judge Kathleen M. Williams on 1/17/2012. (mb) (Entered: 01/18/2012)
01/20/2012	<u>27</u>	MOTION to Compel <i>Disclosure/discovery</i> by United States of America. Responses due by 2/6/2012 (Attachments: # <u>1</u> Exhibit Exhibit A: Defendants Initial Discovery Requests, # <u>2</u> Exhibit Exhibit B: Defendant's Letter to Plaintiff regarding discovery obligations))(White, Charles) (Entered: 01/20/2012)
02/14/2012	<u>28</u>	NOTICE by United States of America re <u>27</u> MOTION to Compel <i>Disclosure/discovery</i> , <u>17</u> Scheduling Order, Order Referring Case to Magistrate Judge,,,, (White, Charles) (Entered: 02/14/2012)
02/15/2012	<u>29</u>	ORDER granting <u>27</u> Defendant's Motion to Compel Discovery. Signed by Magistrate Judge William C. Turnoff on 2/15/2012. (lml) (Entered: 02/15/2012)
02/21/2012	<u>30</u>	ORDER denying <u>25</u> Motion for Reconsideration. Signed by Judge Marcia G. Cooke on 2/21/2012. (tm) (Entered: 02/21/2012)
03/02/2012	<u>32</u>	MOTION for Appointment of Counsel by Andrew D. Marshall. Responses due by 3/19/2012 (yha) (Entered: 03/05/2012)
03/02/2012	<u>33</u>	MOTION for Extension of Time to Comply with Order Granting Defendant's Motion to Compel Discovery by Andrew D. Marshall. (yha) (Entered: 03/05/2012)
03/05/2012	<u>31</u>	NOTICE by United States of America re <u>29</u> Order on Motion to Compel (<i>Plaintiff's Failure to Comply</i>) (White, Charles) (Entered: 03/05/2012)
03/06/2012	<u>34</u>	RESPONSE in Opposition re <u>32</u> MOTION to Appoint Counsel filed by United States of America. (Attachments: # <u>1</u> Affidavit (Exhibit A; Declaration of Ernestine Ford))(White, Charles) (Entered: 03/06/2012)
04/02/2012	<u>35</u>	ORDER denying <u>32</u> Motion to Appoint Counsel. Signed by Judge Marcia G. Cooke on 3/30/2012. (tm) (Entered: 04/02/2012)
05/18/2012	<u>36</u>	NOTICE of Change of Address by Andrew D. Marshall (system updated) (cqs) (Entered: 05/18/2012)
06/18/2012	<u>37</u>	ORDER granting <u>33</u> Motion for Extension of Time to Complete Discovery. Responses due by 6/29/2012. Signed by Magistrate Judge William C. Turnoff on 6/18/2012. (gct) (Entered: 06/18/2012)
08/15/2012	<u>38</u>	MOTION for Leave to Depose Plaintiff (Responses due by 9/4/2012), re <u>17</u> Scheduling Order, Order Referring Case to Magistrate Judge by United States of America. (Attachments: # <u>1</u> Text of Proposed Order)(White, Charles) Modified text on 8/16/2012 (jua). (Entered: 08/15/2012)
08/16/2012	<u>39</u>	NOTICE of Compliance (<i>Updated</i>) by United States of America re <u>38</u> MOTION for Discovery (<i>Motion for Leave to Depose Plaintiff who is in prison</i>) MOTION leave to depose Plaintiff who is in prison re <u>17</u> Scheduling Order,,, Order Referring Case to Magistrate Judge,, filed by United States of America (White, Charles) (Entered: 08/16/2012)
08/20/2012	40	ENDORSED ORDER granting <u>38</u> Defendant's Motion for Leave to Depose Plaintiff. Defendant is granted leave to depose Plaintiff who is confined in prison. Signed by Magistrate Judge William C. Turnoff on 8/20/12. (lml) (Entered: 08/20/2012)
08/29/2012	<u>41</u>	RESPONSE in Opposition re <u>38</u> MOTION for Discovery (<i>Motion for Leave to Depose Plaintiff who is in prison</i>) MOTION leave to depose Plaintiff who is in prison re <u>17</u> Scheduling Order,,, Order Referring Case to Magistrate Judge,, filed by Andrew D. Marshall. (cqs) (Entered: 08/29/2012)
09/12/2012	<u>42</u>	MOTION for Sanctions by United States of America. (Attachments: # <u>1</u> Exhibit (Exhibit A; Notice of Taking Plaintiff's deposition), # <u>2</u> Exhibit (Exhibit B; Reporter's Certificate of Nonappearance), # <u>3</u> Exhibit (Exhibit C; Anderson Declaration))(White, Charles) (Entered: 09/12/2012)

09/12/2012	<u>43</u>	ORDER REFERRING MOTION to the Honorable William C. Turnoff: <u>42</u> MOTION for Sanctions filed by United States of America. Signed by Judge Marcia G. Cooke on 9/12/2012. (scy) (Entered: 09/12/2012)
09/24/2012	<u>44</u>	2ND MOTION for Appointment of Counsel by Andrew D. Marshall. Responses due by 10/12/2012 (cqs) (Entered: 09/24/2012)
10/01/2012	<u>45</u>	MOTION for the court not to rule on defendant United States' Motion for sanctions until after service of the motion & time to respond re <u>42</u> MOTION for Sanctions by Andrew D. Marshall. (dj) (Entered: 10/01/2012)
10/04/2012	<u>46</u>	RESPONSE in Opposition re <u>44</u> MOTION to Appoint Counsel filed by United States of America. (Attachments: # <u>1</u> Exhibit (Exhibit A; Declaration of Robin Allen, with attachments), # <u>2</u> Exhibit (Exhibit B; Declaration of Jeffry Fikes, with attachments), # <u>3</u> Exhibit (Exhibit D; DE #420-2, transcript of proceedings in US v. Marshall, 07-20569 CR JAL, page 4 (page 12)), # <u>4</u> Exhibit (Exhibit E; DE #420-1, transcript of proceedings in US v. Marshall, 07-20569 CR JAL, page 5 (page 63)), # <u>5</u> Exhibit (Exhibit F; Declaration of Dr. Delvena R. Thomas, with attachment), # <u>6</u> Exhibit (Exhibit G; Declaration of Anthony Deutsch, with attachment), # <u>7</u> Exhibit (Exhibit H; Declaration of Jack Little))(White, Charles) (Entered: 10/04/2012)
10/04/2012	<u>47</u>	NOTICE by United States of America re <u>46</u> Response in Opposition to Motion., (<i>in re: Correction of Certificate of Service</i>) (White, Charles) (Entered: 10/04/2012)
10/04/2012		SYSTEM ENTRY – Docket Entry 48 [motion] restricted/sealed until further notice. (nc) (Entered: 10/04/2012)
11/13/2012	<u>49</u>	MOTION for Extension of Time to File Reply as to <u>44</u> Second MOTION to Appoint Counsel, MOTION to Compel <i>Service of Response</i> (Responses due by 11/30/2012) by Andrew D. Marshall. (cqs) (Entered: 11/14/2012)
11/21/2012	<u>50</u>	MOTION to Compel <i>United States To Provide Him Law Library Access and Access To His Mail and Legal Material and To Provide Copies</i> by Andrew D. Marshall. Responses due by 12/10/2012 (cqs) (Entered: 11/21/2012)
11/28/2012	51	ENDORSED ORDER granting <u>49</u> Motion for Extension of Time to File Reply as to <u>44</u> MOTION to Appoint Counsel. Plaintiff shall file his Response on or 12/19/2012. It is further ORDERED that the clerk shall resend to Plaintiff ECF No. 46. Signed by Judge Marcia G. Cooke on 11/28/2012. (af00) Modified linkage on 11/29/2012 (dgj). (Entered: 11/28/2012)
12/10/2012	<u>52</u>	RESPONSE in Opposition re <u>50</u> MOTION to Compel <i>United States To Provide Him Law Library Access and Access To His Mail and Leagal Material and To Provide Copies</i> filed by United States of America. (Attachments: # <u>1</u> Affidavit Anderson Declaration)(White, Charles) (Entered: 12/10/2012)
12/11/2012	<u>53</u>	NOTICE Of Filing Declaration With Attachments by United States of America re <u>52</u> Response in Opposition to Motion, <u>50</u> MOTION to Compel <i>United States To Provide Him Law Library Access and Access To His Mail and Leagal Material and To Provide Copies</i> (Attachments: # <u>1</u> Affidavit (Oliver Declaration with noted attachments referred to therein))(White, Charles)Text Modified on 12/11/2012 (cqs). (Entered: 12/11/2012)
12/17/2012	<u>54</u>	REPLY to <u>46</u> Response in Opposition to Motion For Appointment of Counsel by Andrew D. Marshall. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(cqs) (Entered: 12/17/2012)
12/26/2012	<u>55</u>	MOTION for Continuance of Scheduled Trial Date, by Andrew D. Marshall. Responses due by 1/14/2013 (cqs) (Entered: 12/26/2012)
12/31/2012	<u>56</u>	MOTION for Extension of Time to File Response/Reply as to <u>50</u> MOTION to Compel <i>United States To Provide Him Law Library Access and Access To His Mail and Leagal Material and To Provide Copies</i> by Andrew D. Marshall. (jc) (Entered: 12/31/2012)
01/04/2013	57	ENDORSED ORDER REFERRING MOTION to Magistrate Judge William C. Turnoff: <u>50</u> MOTION to Compel <i>United States To Provide Him Law Library Access and Access To His Mail and Leagal Material and To Provide Copies</i> filed by

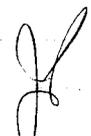
		Andrew D. Marshall. Signed by Judge Marcia G. Cooke on 1/4/2013. (af00) (Entered: 01/04/2013)
01/07/2013	<u>58</u>	SCHEDULING ORDER: GRANTING <u>55</u> MOTION to Continue filed by Andrew D. Marshall. Jury Trial set for 8/26/2013 09:30 AM in Miami Division before Judge Marcia G. Cooke. Calendar Call set for 8/21/2013 03:00 PM in Miami Division before Judge Marcia G. Cooke. Expert Discovery due by 4/29/2013. Fact Discovery due by 3/4/2013. Mediation Deadline 5/13/2013. Dispositive Motions due by 3/25/2013. Pretrial Stipulation due by 7/22/2013. ORDER REFERRING CASE to Mediation. Mediation Deadline 5/13/2013. Signed by Judge Marcia G. Cooke on 1/7/2013. (af00) (Entered: 01/07/2013)
01/10/2013	<u>59</u>	NOTICE of Filing ADDENDUM by Andrew D. Marshall re <u>54</u> Response/Reply To Second motion For Appointment of Counsel (cqs) (Entered: 01/10/2013)
01/11/2013	<u>60</u>	Unopposed MOTION for Physical Examination/ Medical Exam <i>and Incorporated Memorandum of Law</i> by United States of America. (Attachments: # <u>1</u> Text of Proposed Order)(White, Charles) TextModified on 1/11/2013 (cqs). (Entered: 01/11/2013)
01/14/2013	<u>61</u>	REPLY to <u>52</u> Defendant's Response In Opposition to Motion To Compel United States To Provides Him Law Library Access, Access To His Mail &Legal Materials &Provide Him Copies by Andrew D. Marshall. (yar) (Entered: 01/15/2013)
01/15/2013	<u>62</u>	Second MOTION for Medical Exam (<i>Corrected</i>) by United States of America. (Attachments: # <u>1</u> Exhibit (Exhibit A; letter from Marshall in re: IME), # <u>2</u> Text of Proposed Order)(White, Charles) (Entered: 01/15/2013)
01/24/2013	<u>63</u>	NOTICE of Compliance (<i>updated</i>) by United States of America re <u>62</u> Second MOTION for Medical Exam (<i>Corrected</i>) filed by United States of America (Attachments: # <u>1</u> Exhibit (Exhibit B; Marshall's 2nd Letter re Defendant's Motion for IME))(White, Charles) (Entered: 01/24/2013)
01/24/2013	<u>64</u>	NOTICE by United States of America re <u>63</u> Notice of Compliance, <u>62</u> Second MOTION for Medical Exam (<i>Corrected</i>) (<i>Changed Date for proposed Physical Evaluation</i>) (White, Charles) (Entered: 01/24/2013)
01/25/2013	<u>65</u>	NOTICE by United States of America re <u>62</u> Second MOTION for Medical Exam (<i>Corrected</i>), <u>64</u> Notice (Other) (<i>of corrected changed date</i>) (White, Charles) (Entered: 01/25/2013)
01/28/2013	<u>66</u>	RESPONSE in Opposition to Defendant's re <u>62</u> Second MOTION for Medical Exam (<i>Corrected</i>) filed by Andrew D. Marshall. (yar) (Entered: 01/29/2013)
02/12/2013	<u>67</u>	REPLY to Response to Motion re <u>62</u> Second MOTION for Medical Exam (<i>Corrected</i>) filed by United States of America. (White, Charles) (Entered: 02/12/2013)
02/12/2013	<u>68</u>	ADDENDUM to Plaintiff's Reply to Defendant's <u>46</u> Response in Opposition to Motion to Appoint Counsel, by Andrew D. Marshall (yar) (Entered: 02/12/2013)
02/12/2013	<u>69</u>	PAPERLESS ORDER Setting Hearing on all pending Motions <u>42</u> MOTION for Sanctions , <u>44</u> MOTION to Appoint Counsel, <u>45</u> MOTION for the court not to rule on defendant United States' Motion for sanctions until after service of the motion &time to respond re (42) MOTION for Sanctions , 48 SEALED MOTION to Seal The Rosario Declaration Filed In Support of Defendants' Response to Plaintiff's Second Motion to Appoint Counsel by Andrew D. Marshall, <u>50</u> MOTION to Compel <i>United States To Provide Him Law Library Access and Access To His Mail and Leagal Material and To Provide Copies</i> , <u>56</u> MOTION for Extension of Time to File Response/Reply as to (50) MOTION to Compel <i>United States To Provide Him Law Libary Access and Access To His Mail and Leagal Material and To Provide Copies</i> , <u>60</u> MOTION for Medical Exam and <u>62</u> Second MOTION for Medical Exam (<i>Corrected</i>). **Motion Hearing set for Tuesday, 3/5/2013 at 2:00 PM, 301 N. Miami Avenue, 11th Floor in Miami Division before Magistrate Judge William C. Turnoff.** Signed by Magistrate Judge William C. Turnoff on 2/12/2013. (lw1) Modified text on 2/12/2013 (lw1). (Entered: 02/12/2013)

02/13/2013	<u>70</u>	Writ of Habeas Corpus ad Prosequendum for 3/5/13 Motion Hearing as to Plaintiff Andrew D. Marshall. Signed by Magistrate Judge William C. Turnoff on 2/13/2013. (lw1) (Entered: 02/13/2013)
02/13/2013	<u>71</u>	ORDER DIRECTING PLAINTIFF TO SUBMIT TO PHYSICAL EXAMINATION denying as moot <u>60</u> Motion for Medical Exam; granting <u>62</u> Motion for Medical Exam. Signed by Judge Marcia G. Cooke on 2/13/2013. (tm) (Entered: 02/13/2013)
02/14/2013	<u>72</u>	MOTION to Continue by United States of America. Responses due by 3/4/2013 (Attachments: # <u>1</u> Text of Proposed Order)(White, Charles) (Entered: 02/14/2013)
02/14/2013	73	ENDORSED ORDER granting <u>72</u> Defendant's Motion to Continue Hearing on all Pending Motions for good cause shown. Hearing shall be reset via separate order. Signed by Magistrate Judge William C. Turnoff on 2/14/13. (lml) (Entered: 02/14/2013)
02/14/2013	74	ENDORSED ORDER RESCHEDULING HEARING ON ALL PENDING MOTIONS: Motion Hearing set for 3/12/2013 AT 02:00 PM in Miami Division before Magistrate Judge William C. Turnoff. Signed by Magistrate Judge William C. Turnoff on 2/14/13. (lml) (Entered: 02/14/2013)
02/15/2013	75	PAPERLESS ORDER Cancelling <u>70</u> Writ of Habeas Corpus ad Prosequendum. Hearing has been reset. New writ to be issued. Signed by Magistrate Judge William C. Turnoff on 2/15/2013. (lw1) (Entered: 02/15/2013)
02/15/2013	<u>76</u>	Writ of Habeas Corpus ad Prosequendum for 3/12/13 Motion hearing as to Plaintiff Andrew D. Marshall. Signed by Magistrate Judge William C. Turnoff on 2/15/2013. (lw1) (Entered: 02/15/2013)
02/19/2013	<u>77</u>	MOTION for Medical Exam (<i>RENEWED</i>) by United States of America. (Attachments: # <u>1</u> Text of Proposed Order)(White, Charles) (Entered: 02/19/2013)
02/22/2013	<u>78</u>	MOTION to Appear Telephonically at Hearing by Andrew D. Marshall. (yar) (Entered: 02/22/2013)
02/25/2013	79	ENDORSED ORDER denying <u>78</u> Plaintiff's Motion to Appear Telephonically at Hearing. Signed by Magistrate Judge William C. Turnoff on 2/25/13. (lml) (Entered: 02/25/2013)
02/25/2013	<u>80</u>	2nd Addendum to Plaintiff's Reply to Defendant's <u>46</u> RESPONSE in Opposition re <u>44</u> MOTION to Appoint Counsel, by Andrew D. Marshall (yar) (Entered: 02/26/2013)
03/04/2013	81	ENDORSED ORDER granting <u>77</u> Defendant's Renewed Motion for Physical Examination of Plaintiff on 4/3/13. Signed by Magistrate Judge William C. Turnoff on 3/4/13. (lml) (Entered: 03/04/2013)
03/11/2013	82	ENDORSED ORDER RESCHEDULING HEARING ON ALL PENDING MOTIONS:Per Court's request, Motion Hearing rescheduled for Wednesday, 3/13/2013 at 2:00 PM, 301 N. Miami Avenue, 11th Floor in Miami Division before Magistrate Judge William C. Turnoff. Signed by Magistrate Judge William C. Turnoff on 3/11/2013. (lw1) (Entered: 03/11/2013)
03/11/2013	<u>83</u>	MOTION for Protective Order , MOTION for Disclosure by United States of America. (Attachments: # <u>1</u> Text of Proposed Order)(White, Charles) (Entered: 03/11/2013)
03/12/2013	84	Clerk's Notice of Undeliverable Mail re 75 Order. US Mail returned for: ANDREW D. MARSHALL . Updated address found and document resent to new address. First return. Updated address, Per BOP. Case/System Updated. (lbc) Modified on 3/14/2013 to reflect corrected docket text and action by clerk. (jmd) (Entered: 03/12/2013)
03/13/2013	85	Clerk's Notice of Undeliverable Mail re <u>76</u> Writ of Habeas Corpus ad Prosequendum Issued. US Mail returned for: ANDREW D. MARSHALL . Updated address found and document resent to new address; Second return. Per DE #84, Case/System Updated. (lbc) Modified on 3/14/2013 to reflect correct docket text and action. (jmd) (Entered: 03/13/2013)

03/13/2013	<u>86</u>	MOTION for Leave to File <i>Supplemental Authority supporting Defendant's Response in Opposition to Plaintiff's Second Motion to Appoint Counsel, and attachments thereto</i> , by United States of America. (Attachments: # <u>1</u> Supplement (proposed Supplemental Authority, and attachments thereto), # <u>2</u> Text of Proposed Order)(White, Charles) (Entered: 03/13/2013)
03/13/2013	87	Minute Entry for proceedings held before Magistrate Judge William C. Turnoff: Motion Hearing held on 3/13/2013 <u>42</u> MOTION for Sanctions, <u>44</u> MOTION to Appoint Counsel, <u>45</u> MOTION for the court not to rule on defendant United States' Motion for sanctions until after service of the motion & time to respond re (42) MOTION for Sanctions, 48 SEALED MOTION to Seal The Rosario Declaration Filed In Support of Defendants' Response to Plaintiff's Second Motion to Appoint Counsel by Andrew D. Marshall, <u>50</u> MOTION to Compel United States To Provide Him Law Library Access and Access To His Mail and Leagal Material and To Provide Copies, <u>56</u> MOTION for Extension of Time to File Response/Reply as to (50) MOTION to Compel United States To Provide Him Law Library Access and Access To His Mail and Leagal Material and To Provide Copies, 60 MOTION for Medical Exam and 62 Second MOTION for Medical Exam (Corrected), <u>83</u> MOTION for Protective Order MOTION for Disclosure filed by United States of America. Defendant's Ore Tenus Motion for Leave to take Deposition of Plaintiff Andrew Marshall also addressed. *Motions addressed. Oral arguments heard. Omnibus Order to follow. **APPEARANCES: Andrew D. Marshall (Writ-Edgefield FCI, Edgefield, SC) present Pro Se. AUSA Charles White present on behalf of Defendant/USA. Elizabeth Garcia, Esq. and Jeanelle Ferril, Esq. present on behalf of the Bureau of Prisons (BOP). Clerk's Note: Writ to be extended twenty (20) days per Order of the Court. (Digital 14:43:34.) (Time: 2:00PM-3:35PM) (lw1) (Entered: 03/13/2013)
03/13/2013	88	ENDORSED ORDER requiring the parties to participate in mediation pursuant to <u>58</u> Order Referring Case to Mediation. The parties are required to participate in mediation no later than May 13, 2013. Accordingly, the parties shall agree upon a mediator, as well as a date, time, and place for the mediation conference, and shall notify the court of such within 10 days of this Order. Failure to do so may result in sanctions, including the dismissal of this action. Signed by Judge Marcia G. Cooke on 3/13/2013. (af00) (Entered: 03/13/2013)
03/13/2013	<u>91</u>	ORDER Extending <u>76</u> Writ of Habeas Corpus ad Prosequendum to 4/2/13 as to Andrew D. Marshall. Signed by Magistrate Judge William C. Turnoff on 3/13/2013. (lw1) (lw1). (Entered: 03/15/2013)
03/14/2013	<u>89</u>	ORDER granting <u>42</u> Defendant's Motion for Sanctions; denying <u>44</u> Plaintiff's Motion to Appoint Counsel ; denying <u>45</u> Plaintiff's Motion for Court Not to Rule on Sanctions Motion; granting 48 Defendant's Sealed Motion to Seal Declaration; granting <u>50</u> Plaintiff's Motion to Compel Access; deeming moot <u>56</u> Plaintiff's Motion for Extension of Time to File Reply ; granting <u>83</u> Defendant's Motion for Limited Disclosure of Plaintiff's Medical Records; and granting Defendant's ore tenus motion to take Plaintiff's deposition. Signed by Magistrate Judge William C. Turnoff on 3/14/13. (lml) Modified by Unsealing document per Chambers on 3/14/2013 (nc). (Entered: 03/14/2013)
03/14/2013	90	ENDORSED ORDER granting <u>86</u> Defendant's Motion for Leave to File Supplemental Authority. Signed by Magistrate Judge William C. Turnoff on 3/14/13. (lml) (Entered: 03/14/2013)
03/25/2013	<u>92</u>	MOTION for Leave to File Supplemental Authority in Support of Response to Plaintiff's Second Motion for Appointment of Counsel by Andrew D. Marshall. (yha) (Entered: 03/25/2013)
04/03/2013	<u>93</u>	OBJECTION/APPEAL of Magistrate Judge <u>89</u> Order on Motion for Sanctions, Order on Motion to Appoint Counsel, Order on Motion for Miscellaneous Relief, Order on Sealed Motion, Order on Motion to Compel, Order on Motion for Extension of Time to File Response/Reply, Order on Motion for Protective Order, Order on Motion for Disclosure, to District Court (amb) (Entered: 04/03/2013)
04/05/2013	<u>94</u>	MOTION for Continuance of Trial Date & Discovery Deadline by Andrew D. Marshall. Responses due by 4/22/2013 (yar) (Entered: 04/05/2013)

04/12/2013	<u>95</u>	MOTION to Compel <i>Defendant, United States, to Comply with Court's Order to Return Plaintiff to Edgefield Camp</i> by Andrew D. Marshall. Responses due by 4/29/2013 (ral) (Entered: 04/12/2013)
04/12/2013	96	ENDORSED ORDER denying <u>94</u> Motion to Continue without prejudice. Signed by Judge Marcia G. Cooke on 4/12/2013. (af00) (Entered: 04/12/2013)
04/12/2013	<u>97</u>	RESPONSE in Opposition re <u>94</u> MOTION to Continue filed by United States of America. (White, Charles) (Entered: 04/12/2013)
04/12/2013	<u>98</u>	MOTION to Dismiss <u>54</u> Response/Reply (Other), <u>44</u> MOTION to Appoint Counsel, <u>89</u> Order on Motion for Sanctions, Order on Motion to Appoint Counsel, Order on Motion for Miscellaneous Relief, Order on Sealed Motion, Order on Motion to Compel, Order on Motion for Extension of Time to File Response/Reply, Order on Motion for Protective Order, Order on Motion for Disclosure,,,,,,,,,,,,,, <u>46</u> Response in Opposition to Motion,, <u>93</u> OBJECTION of Magistrate Judge <u>89</u> Order on Motion for Sanctions, Order on Motion to Appoint Counsel, Order on Motion for Miscellaneous Relief, Order on Sealed Motion, Order on Motion to Compel, Order on Motion for Extension of Time to File Response by United States of America. Responses due by 4/29/2013 (Attachments: # <u>1</u> Deposition Excerpt of Marshall's Deposition Transcript)(White, Charles) (Entered: 04/12/2013)
05/08/2013	<u>99</u>	RESPONSE in Opposition to Defendant's re <u>98</u> MOTION to Dismiss <u>54</u> Response/Reply (Other), <u>44</u> MOTION to Appoint Counsel, <u>89</u> Order on Motion for Sanctions, Order on Motion to Appoint Counsel, Order on Motion for Miscellaneous Relief, Order on Sealed Motion, Order on Motion to Compel, Or filed by Andrew D. Marshall. (yar) (Entered: 05/08/2013)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(MIAMI DIVISION)


DEC 07 2010

ANDREW DAVID MARSHALL,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)
_____)

10-24338-CV-COOKE/BANDSTRA

CASE NO.: _____

ORIGINAL COMPLAINT

PLAINTIFF MARSHALL, pro se, and currently a pretrial detainee at the Miami Federal Detention Center ("FDC-Miami"), hereby brings this action for compensatory damages pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 et seq., over spinal injuries he incurred due to the acts and/or omissions of FDC-Miami correctional officers.

JURISDICTION AND VENUE

1. Jurisdiction is proper pursuant to:

(a) 28 U.S.C. § 1331, in that this is a civil action arising under the laws of the United States.

(b) 28 U.S.C. § 1346, as the United States is the Defendant.

(c) The FTCA, as this is an action against the United States for physical injuries the Plaintiff incurred due to the conduct of United States Bureau of Prisons' ("BOP") correctional officers. Notice of the claim was presented by Plaintiff to the BOP, and the BOP sent Plaintiff a denial letter within 6 months of the filing of this action.

2. Venue is proper pursuant to:

(a) 18 U.S.C. § 1965(a), because the Defendant resides, is found, operates under color of authority or office, has agents, and transacts affairs in this district.

(b) 28 U.S.C. §§ 1391(e) and 1402, on the basis that this action is against the United States, the Plaintiff resides in this district, and the events and omissions giving rise to this claim occurred within the territorial limits of this district.

PARTIES

3. Plaintiff Andrew Marshall is a citizen of the United States of America, who has resided in Miami Florida for over 10 years, and is currently a pretrial detainee at FDC-Miami.

4. Defendant United States is a government entity.

FACTS OF THE CASE

5. On or about February 23, 2008, while detained at FDC-Miami, Unit 11-W, correctional officer Casey ordered Mr. Marshall to stand for count. Marshall explained that he was disabled with spinal injuries that made it difficult for him to stand, and that he was in a lot of pain, and that he had not received any medical care for his injuries in the six plus months he was detained at FDC-Miami. Marshall told Casey that if FDC-Miami was not going to provide him medical care, that he was not going to stand for count.

6. Officer Casey called for backup, and several other officers came to Marshall's cell, including Lieutenant Harrison and 5 or more other officers who's names are not at this time known. Marshall was ordered to go to the secure housing unit ("SHU"), for failing to stand for count. Marshall agreed to go, and walked down a flight of stairs from his cell to the common area. While walking down the stairs his left leg gave out, and Lieutenant Harrison asked whether Marshall had a leg injury. Marshall explained that his legs collapsed due to spinal damage. Once down the stairs, Marshall requested a wheelchair to transport him to the SHU. Lieutenant Harrison told Marshall that he was not going to be provided a wheelchair, and Marshall refused to walk. Marshall was then handcuffed with his arms behind his back without incident. Marshall was not violent and did not resist the officers, but he continued to insist on a wheelchair to assist him in getting to the SHU, and refused to walk.

7. Lieutenant Harrison directed officers to bring a gurney to Marshall, and Marshall was moved onto the gurney face up, with the handcuffs underneath him and pressing painfully into the damaged area of his spine. Marshall reported that the handcuffs were pressing painfully into the damaged area of his spine, and asked Harrison to have the cuffs moved to his front, or to have him rolled onto his stomach. Marshall was ignored, and was transported on the gurney with the handcuffs pressed into his spine.

8. The officers took Marshall from Unit 11-W to the elevator, and upon the elevator arriving, moved him into the elevator, and lowered him to the floor. But

approximately 6 to 8 inches from the floor of the elevator the gurney was dropped, whereby the jolt caused the handcuff to impact Marshall's spine. It felt to him that there was damage to his spine just above the preexisting back injury.

9. Marshall was not taken to the SHU (located on the 12th floor) from the elevator. Rather, the elevator went down to the medical department. Once there, officers again lowered Marshall to the ground in the gurney. There Marshall was seen briefly by someone from the psychology department, who had Marshall transferred to a wheelchair. Subsequently officers brought Marshall to the SHU in the wheelchair.

10. The spinal damage Marshall had prior to being incarcerated was incurred in a 2002 motor vehicle accident. A lumbar MRI from 2002 indicates an L4-L5 disc bulge and superimposed left lateral disc herniation and annular tearing with compromise of exiting left L4 nerve root. An MRI performed in May of 2008, shortly after the gurney incident, indicates increased damage, including a L3-L4 disc bulge with mild bilateral neuroforaminal stenosis (not present in the 2002 MRI), and progression to a broad based disc bulge at L4-L5 (as compared to a left side bulge in 2002) with moderate bilateral neuroforminal stenosis and encroachment of the exiting nerve roots (now both sides, instead of just the left nerve in the 2002 film).

11. Experientially Marshall is in far greater pain than he was before the gurney incident. For the most, after his pain became intractable. He also experiences increased dysfunction in his lower extremities after correctional officers dropped him in the gurney. While not paralyzed, he is now wheelchair dependent. He is much more limited now in other ways as well. He now experiences difficulty sitting upright for more than a few minutes, and has difficulty attending to his hygiene and other needs.

12. Injury Marshall incurred from being dropped in a gurney by correctional officers is permanent and or continuing.

CAUSE OF ACTION

13. Plaintiff brings this cause pursuant to the FTCA, for injuries he incurred due to the conduct of correctional officers while employed by and acting on behalf of the United States Government.

REQUESTED RELIEF

14. Plaintiff seeks one million dollars as compensation for past and future expenses related to the spinal damage at issue in this case, including but not limited to medical care), pain and suffering, loss of earnings, loss of quality

of life, and psychological injury.

A handwritten signature in cursive script that reads "A. Marshall". The signature is written in black ink and is positioned above a horizontal line.

Andrew Marshall, Pro Se
Reg. No.: 78814-004
FDC-Miami
P.O. Box 019120
Miami, FL 33101-9120

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<p>I. (a) PLAINTIFFS</p> <p style="text-align: center;">Andrew D. Marshall</p> <p>(b) County of Residence of First Listed Plaintiff <u>Miami-Dade</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p> <p>Andrew Marshall, Pro Se Reg. # 78814-004 FDC - Miami PO Box 019120 Miami, FL 33101-9120</p>	<p>DEFENDANTS</p> <p style="text-align: center;">United States of America</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p> <p style="text-align: right; font-size: 2em; font-weight: bold;">DEC 07 2010</p>
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(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td>PTF DEF</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td>PTF DEF</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> <td></td> <td></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> <td></td> <td></td> </tr> </table>	Citizen of This State	<input checked="" type="checkbox"/> 1	PTF DEF	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	PTF DEF	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5			Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6		
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p style="text-align: center;">SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p style="text-align: center;">FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p style="text-align: center;">IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO

(See instructions second page): JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Federal Tort Claim Act, 28 U.S.C. § 2671 et seq.

LENGTH OF TRIAL via 7 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \$1,000,000 CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE OF ATTORNEY OF RECORD: A. Marshall DATE: 12-5-10

FOR OFFICE USE ONLY

AMOUNT _____ RECEIPT # _____ IFP Yes

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-24338-CIV-MGC/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, the Defendant, United States of America, by and through the undersigned Assistant United States Attorney, to Answer Plaintiff's Complaint as follows:

1. Plaintiff's initial partial sentence simply indicates the parties of the action and indicates the allegations follow. As such, it does not require an answer, but if deemed required, it is denied.

2. Regarding Paragraph 1 of the Complaint, it is jurisdictional and does not require a response. However, if an answer is deemed required, it is denied.

3. Regarding Paragraph 2 of the Complaint, it is jurisdictional and does not require a response. However, if an answer is deemed required, it is denied.

4. Regarding Paragraph 3 of the Complaint, Defendant is without sufficient knowledge of the citizenship of, or residency of Plaintiff Andrew David Marshall, and, therefore, neither admits nor denies. Defendant admits Plaintiff Andrew David Marshall is a pretrial detainee at FDC Miami.

5. Regarding Paragraph 4 of the Complaint, Defendant admits.

6. Regarding Paragraph 5 of the Complaint, Defendant admits that on February 23, 2008, Plaintiff Andrew David Marshall was ordered to stand for count by Correctional Officer Casey. Defendant denies the remainder of the allegations raised in paragraph 5.

7. Regarding Paragraph 6 of the Complaint, Defendant admits only that Correctional Officer Casey called his supervisor, Lieutenant Harrison, regarding Plaintiff

Andrew David Marshall's refusal to comply with his order to stand up for count. Defendant admits Lieutenant Harrison arrived in the Unit, but denies there were five or more officers with him. In all other respects, the Defendant is without sufficient knowledge to form a belief as to the truth of the averments in the remaining is paragraph and, therefore, denies the same.

8. Regarding Paragraph 7 of the Complaint, Defendant admits that Plaintiff Andrew David Marshall was placed on a Gurney due to his refusal to walk or sit in his wheelchair. Defendant denies that he was placed on the Gurney face up with his arms handcuffed behind his back. Plaintiff Andrew David Marshall was transported from the housing unit in a Gurney face down due to his arms being handcuffed behind his back. Defendant denies the remainder of the allegations raised in paragraph 7 of the Complaint.

9. Regarding Paragraph 8 of the Complaint, Defendant admits that Plaintiff Andrew David Marshall was moved from the 11-West housing unit and carried to the elevator in a Gurney. Defendant denies the allegation that the Gurney was dropped. The remainder of the allegations raised in paragraph 8 of the Complaint are the Plaintiff's opinion to which a response is not required. To the extent a response is required, the Defendant denies the same.

10. Regarding Paragraph 9 of the Complaint, Defendant admits the Plaintiff Andrew David Marshall was taken to the Health Services Department and seen by a psychologist due to his expressing a suicidal ideation. Plaintiff was subsequently transported to the Special Housing Unit in a wheelchair.

11. Regarding Paragraph 10 of the Complaint, the Defendant is without sufficient knowledge to form a belief as to the truth of the averments in the remaining is paragraph and, therefore, denies the same.

12. Regarding Paragraph 11 of the Complaint, the Defendant is without sufficient knowledge to form a belief as to the truth of the averments in the remaining is paragraph and, therefore, denies the same.

13. Regarding Paragraph 12 of the Complaint, the Defendant is without sufficient knowledge to form a belief as to the truth of the averments in the remaining is paragraph and, therefore, denies the same.

14. Regarding Paragraph 13 of the Complaint, it is jurisdictional and does not require a response. However, if an answer is deemed required, it is denied.

15. Regarding Paragraph 14 of the Complaint, it is a prayer for relief. The United States denies that Plaintiff Andrew David Marshall is entitled to any of the relief he seeks.

AFFIRMATIVE DEFENSES

Having responded fully to all allegations in the Complaint, the Defendant, United States of America, asserts the following affirmative defenses:

FIRST DEFENSE

The amount of damages, if any, awarded to Plaintiff must be reduced by the amounts which have been paid for the benefit of Plaintiff or which are available to her from collateral sources.

SECOND DEFENSE

If the United States is found liable, the United States is entitled to a set off of monies paid or payable by any party or non-party to this action by settlement or judgment or through an agreement entered into by Plaintiff. (Florida Statute §768.041 and §46.015)

THIRD DEFENSE

Plaintiff's maximum potential damage recovery against Defendant United States, inclusive of costs and attorneys fees, cannot exceed the amount claimed by Plaintiff in her administrative claim.

FOURTH DEFENSE

Pursuant to 28 U.S.C. §1346, Defendant United States hereby asserts the defense of sovereign immunity.

FIFTH DEFENSE

Pursuant to 28 U.S.C. §2411, Defendant United States hereby asserts that pre-judgment interest is not authorized by statute.

SIXTH DEFENSE

The damages complained were not proximately caused by any negligent act or omission of any employee of the United States acting within the course and scope of his/her employment. The United States is not liable for acts of third parties. (28 USC §1346(b)).

SEVENTH DEFENSE

Plaintiff's cause of action and recovery, if any, is limited and/or controlled by Florida Statutes §766.118.

EIGHTH DEFENSE

Plaintiff's cause of action and recovery, if any, should be reduced for failure to mitigate damages.

NINTH DEFENSE

Any state or federal common or statutory law that limits the liability of a private individual, or the damages awarded, under similar circumstances to those alleged in the Complaint, shall limit or preclude plaintiffs' claim or recovery against the United States.

TENTH DEFENSE

Defendant United States hereby specifically preserves any and all other defenses, not currently known, which it has or it learns, through discovery, may be applicable

WHEREFORE, the United States of America, having answered fully, respectfully requests that judgement be entered in favor of the Defendant, United States of America.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By s/ Charles S. White
CHARLES S. WHITE
Fla. Bar No. 394981
Assistant United States Attorney
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Tel. (305) 961-9286
Fax. (305) 530-7139
E-mail: charles.white@usdoj.gov

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-24338-CIV-MGC/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 14, 2011 I electronically filed the forgoing document with the Clerk of the Court using CM/ECF. I also certify that the forgoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By s/ Charles S. White
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SERVICE LIST
MARSHALL v. UNITED STATES OF AMERICA
Case No. 10-24338-CIV-MGC/Turnoff
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

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Plaintiff *pro se*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-24338-Civ-COOKE/BANDSTRA

ANDREW D. MARSHALL,

Plaintiff

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER SETTING CIVIL TRIAL DATE AND PRETRIAL DEADLINES

THIS matter is before me upon Plaintiff's Motion for Continuance. ECF No. 55. Having reviewed the Motion, the record, and being fully otherwise informed in the premises, it is hereby

ORDERED and ADJUGED as that the Motion is **GRANTED** and the pretrial deadlines are modified as follows:

1. **Trial Date and Calendar Call.** This case is set for trial on the Court's two-week trial period commencing **August 26, 2013, at 9:30 a.m.**, before the undersigned United States District Judge at the Federal Courthouse, Courtroom 11-2, 400 North Miami Avenue, Miami, Florida. Calendar Call shall be held on Wednesday, **August 21, 2013, at 3:00 p.m.**, at the same location. The case shall be assigned to the standard case management track.

2. **Pretrial Conference.** No Pretrial Conference shall be held in this action, unless the Court determines that a pretrial conference is necessary. Should a pretrial conference be set, the compliance deadlines as set forth in the remainder of this Order shall remain unaltered.

3. **Pretrial Deadlines.** The pretrial deadlines are as follows:

[February 11, 2013] Parties shall furnish opposing counsel with a written list containing the names and addresses of all fact witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify unless good cause is shown and there is no prejudice

to opposing party. The parties are under a continuing obligation to supplement discovery responses within ten (10) days of receipt or other notice of new or revised information.

[March 4, 2013] All fact discovery must be completed.

[March 25, 2013] All dispositive and other pretrial motions not explicitly excluded by S.D. Fla. L.R. 7.1.A.1 and accompanying memoranda of law, must be filed.

[April 1, 2013] Plaintiff must furnish expert witness list to the Defendant, along with the summaries/reports required by Local Rule 16.1.K, and only those expert witnesses shall be permitted to testify. Within the fourteen-day period thereafter, Plaintiff shall make its experts available for deposition by Defendant.

[April 15, 2013] Defendant must furnish expert witness list to the Plaintiff along with the summaries/reports required by Local Rule 16.1.K, and only those expert witnesses shall be permitted to testify. Within the fourteen-day period thereafter, Defendant shall make its experts available for deposition by Plaintiff.

[April 29, 2013] All expert discovery must be completed.

[May 6, 2013] All *Daubert* and *Markman* motions and accompanying memoranda of law must be filed.

[May 13, 2013] Mediation must be completed. The Court has issued concurrently herewith a separate Order of Referral.

[July 22, 2013] (a) A Joint Pretrial Stipulation must be filed. The stipulation shall conform to Local Rule 16.1.E and include a joint, neutral summary of the claims and defenses in the case, not to exceed one short paragraph per litigant claim, to be read as an introduction for *voir dire* examination. The Court will not accept unilateral pretrial stipulations, and will strike *sua sponte* any such submissions. Should any of the parties fail to cooperate in the preparation of the joint pretrial stipulation, all other parties shall file a certification with the Court stating the circumstances. Upon receipt of such certification, the Court shall issue an order requiring the non-cooperating party or parties to show cause why such party or parties (and their respective attorneys) have failed to comply with the Court's order. A copy of the joint pretrial stipulation shall be delivered to chambers in Corel WordPerfect format at the time of filing via computer disk, or emailed to: Cooke@flsd.uscourts.gov); and

(b) A Joint Summary of the Parties' Motion(s) *in Limine* must be filed. The joint summary shall contain a cover page providing the style of the case and an index of the motion(s) *in limine*. For each evidentiary issue, the joint summary must include: a one page argument identifying the evidence sought to be excluded or included at trial and citing legal authority supporting exclusion or inclusion; and a one page response to the argument citing legal authority in support of admission or exclusion of the disputed

evidence. The parties shall work together to prepare the joint summary, and are encouraged to resolve evidentiary issues through stipulation. Motions *in limine* will not be accepted in any other form.

[August 16, 2013] (a) Final proposed jury instructions and verdict form must be filed.¹ The parties shall submit a SINGLE, JOINT set of proposed jury instructions and verdict form, though the parties need not agree on the proposed language of each or any instruction or question on the verdict form. Where the parties do agree on a proposed instruction or question, that instruction or question shall be set forth in Times New Roman 14 point typeface. Instructions and questions proposed only by the plaintiff(s) to which the defendant(s) object shall be italicized. Instructions and questions proposed only the defendant(s) to which the plaintiff(s) object shall be bold-faced. Each jury instruction shall be typed on a separate sheet and must be supported by citations of authority. Each disputed jury instruction shall also state the basis for the objection(s) at the bottom of the sheet, before the citations of authority. In preparing their requested jury instructions, the parties shall utilize as a guide the Pattern Jury Instructions for Civil Cases approved by the United States Eleventh Circuit, including the Directions to Counsel contained therein. A copy of the proposed jury instructions and verdict form shall be emailed to: Cooke@flsd.uscourts.gov in Word format at the time of filing, and;

(b) A trial witness list indicating each witness who will testify at trial, a one sentence synopsis of the testimony, and in consultation with opposing counsel, indicate the amount of time needed for direct and cross examination;

(c) A list of witnesses with some identifying information (address or place of employment) to provide to jury; and

(d) Proposed *Voir Dire* questions specific to the case (general *voir dire* questions should not be included).

4. **Trial Instructions**. All exhibits must be pre-marked. The Plaintiff's exhibits shall be marked numerically preceded by the letter "P." Defendant's exhibits shall be marked numerically preceded by the letter "D." For example, Plaintiff's exhibit shall be marked P-1, P-2, P-3 etc. Likewise, Defendant's exhibit shall be marked D-1, D-2, D-3 etc. A typewritten exhibit list setting forth the number and letter, and description of each exhibit must be submitted at the time of trial. The parties shall submit said exhibit list on Form AO 187, which is available

¹ If this action is to be set for a bench trial the Parties are directed to submit proposed findings of fact and conclusions of law in lieu of proposed jury instructions.

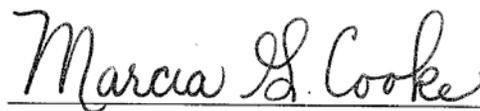
from the Clerk's office.

5. **Motion for Continuance**. A Motion for Continuance shall not stay the requirement for the filing of a Pretrial Stipulation and, unless an emergency situation arises, a motion for continuance will not be considered unless it is filed at least fourteen (14) days prior to the date on which the trial calendar is scheduled to commence. A continuance of the trial date will be granted only on a showing of compelling circumstances.

6. **Non-Compliance**. Non-compliance with any provision of this Order may subject the offending party to sanctions, including denial of the motion, dismissal of claims or striking of defenses. It is the duty of all counsel to enforce the timetable set forth herein in order to insure an expeditious resolution of this cause.

7. **Settlement**. If this case is settled, counsel are directed to inform the Court promptly by calling Chambers and submitting an appropriate order for dismissal within ten (10) days of notification of settlement to the Court, pursuant to Fed. R. Civ. P. 41(a)(1). The case will remain on the trial calendar until an order dismissing the action is entered by the Court.

DONE AND ORDERED in Miami, Florida, this 7th day of January 2013



MARCIA G. COOKE
United States District Judge

Copies furnished to:
William C. Turnoff, U.S. Magistrate Judge
Counsel of record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-24338-Civ-COOKE/BANDSTRA

ANDREW D. MARSHALL,

Plaintiff

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER OF REFERRAL TO MEDIATION

Trial having been set in this matter for the two week period commencing **August 26, 2013**, pursuant to Federal Rule of Civil Procedure 16 and Southern District Local Rule 16.2, it is hereby

ORDERED AND ADJUDGED as follows:

1. All parties are required to participate in mediation. The mediation shall be completed no later than **May 13, 2013**.

2. Plaintiff's counsel, or another attorney agree upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified mediators, maintained in the office of the clerk of this Court, but may select any other mediator. The parties shall agree upon a mediator within fifteen (15) days from the date hereof, notify the Court of such and attach to the notice a proposed order scheduling mediation. Additionally, this proposed order should be e-mailed to cooke@flsd.uscourts.gov. If there is no agreement, Plaintiff's counsel shall promptly notify the Clerk in writing and the Clerk shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.

3. A place, date and time for mediation convenient to the mediator, counsel of record, and unrepresented parties shall be established. The Plaintiff's attorney shall complete the form order attached and submit it to the Court, no later than thirty (30) days prior to the mediation.

4. The appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

5. All discussions, representations, and statements made at the mediation conference shall be confidential and privileged.

6. At least ten (10) days prior to the mediation date, all parties shall present to the mediator a brief written summary of the case identifying issues to be resolved. Copies of these summaries shall be served on all other parties.

7. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements herein or who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.

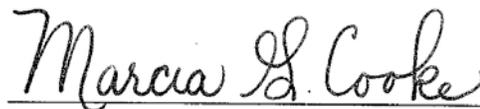
8. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Rule 16.2.B.6, or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court.

9. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16.2.F, by the filing of a notice of settlement signed by counsel of record within ten (10) days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

10. Within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settlement (in full or in part), was continued with the consent of the parties, or whether the mediator declared an impasse.

11. If mediation is not conducted, sanctions may be imposed.

DONE AND ORDERED in Chambers, Miami, Florida, this 7th day of January 2013.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
William C. Turnoff, U.S. Magistrate Judge
Counsel of record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-24338-Civ-COOKE/BANDSTRA

ANDREW D. MARSHALL,

Plaintiff

vs.

UNITED STATES OF AMERICA,

Defendant.

_____ /

ORDER SCHEDULING MEDIATION

The mediation conference in this matter shall be held with _____ on
_____, 20__, at _____ .m. at _____
_____, Florida.

ENTERED this ___ day of _____, 20__.

Honorable Marcia G. Cooke
UNITED STATES DISTRICT JUDGE

Copies furnished to:

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-24338-CIV-COOKE/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

DEFENDANT'S MOTION TO DISMISS
PURSUANT TO 28 UNITED STATES CODE, §1915(e)(2)(A)
(FOR UNTRUE ALLEGATIONS OF POVERTY)

COMES NOW the Defendant, by and through the undersigned Assistant United States Attorney, pursuant to 28 U.S.C. §1915(e)(2)(A), to move this Court for an Order dismissing this case based upon Plaintiff's untrue allegations of poverty, and in support thereof would show:

Synopsis

Marshall is an inmate of the Federal Bureau of Prisons ("BOP"). To prosecute his negligence claim, Plaintiff *pro se* filed his second motion for appointment of counsel citing the *in forma pauperis* statute, 28 U.S.C. §1915. See Docket Entry ("DE") #44) As demonstrated in the Defendant's Response to Plaintiff's initial motion for appointment of counsel (DE #34), and fortified in Defendant's Response to Plaintiff's second motion for appointment of counsel (DE #46), Plaintiff is not indigent. Indeed, he continues to maintain a substantial cash balance in his prison commissary account. In his Reply (DE #54), Marshall states as follows:

I. **INDIGENCY**. The defense claims that the undersigned is not indigent. This is not true. I presently have \$2,822.84 in my inmate account, which is all the money I have, and not enough to pay an attorney. It probably won't be enough to pay for a medical expert in this case.

The bulk of the money in my account was recently inherited. The remainder was saved little by little out of the money I receive monthly for food, hygiene items, legal supplies, and other assorted expenses. I also have expenses that need to be paid, including maintenance and storage on a sailboat that was my home prior to my incarceration, and will probably be my home again upon my release. I also have to pay fines in my criminal case, and other monies not covered by monthly deposits from my family.

The defense says that I “do not aver, much less show, that [I am] indigent.” Response at pg.3. However, my inability to afford an attorney is raised in the “Background” section at page 1 of my motion, and at page 11 it clearly states that “I remain unrepresented and unable to find or afford an attorney on my own.” Additionally, I was found to be indigent in United States v. Marshall, 07-20569-CR-Lenard. A copy of my indigency affidavit in the appeal in that case, is attached here as Exhibit A. The affidavit is dated 10/4/12, whereas my 2nd Motion for Appointment of Counsel is dated 9/18/12, so it covers the applicable period. . . . I’d need to update it, so it is the best I can do.

See DE #54, pages 6-8.

In contrast to his repeated claims of indigency, Marshall’s own admission (“ I presently have \$2,822.84 in my inmate account”) demonstrates that he is not indigent. In addition, as Marshall acknowledges in his “indigency affidavit” filed in the appeal from his criminal conviction, he expects to receive \$400 monthly income from a “trust.” Moreover, in his recent deposition, Plaintiff acknowledged that he is the beneficiary of a trust account “set up for me” valued “in the neighborhood of 400,000 to 500,000.” Marshall’s Deposition, page 113. According to Marshall, his brother and sister administer this trust and he (Marshall) does not “recall any kind of limitation in terms of principal and interest, you know, being off limits, but it was up to my brother and my sister how to administer it.” (See attached excerpt of Marshall’s Deposition, page 114). In his “indigency affidavit,” Marshall also acknowledges ownership of a Honda Motorcycle valued at \$1,000. And in an attachment to his Reply (See DE #54, pages 76-86), Marshall acknowledges ownership of other property including a sailboat. Astonishingly, Marshall also acknowledges his efforts to conceal his assets from lawful authorities as well as to reclaim them “in the event I survived.”

I am not sure whether certain items are assets of mine, or their market value. Due to concern that local or federal governments or their agents might kill me, I gave away my possessions prior to being incarcerated, as well as property and money after incarceration, in the event that I was killed. The property was to be held for me in the event I survived, with the transfer of ownership upon my demise.

This property includes a sailboat that served as my home for over ten years. I estimate that prior to my arrest it was worth between \$3000.00 and \$5000.00. I’ve been incarcerated for over 5 years, and believe the vessel has likely deteriorated considerably since then. I have not seen it in years, and have no way of estimating its current value. The individual overseeing the vessel claims ownership of it on the one hand, and says it is mine on the other. However, he does not answer my questions about the vessel, and I do not presently know where it is located. However, the title remains in my name.

The situation is similar with regards to other property I own, or owned. I owned a motorcycle that was worth approximately \$1,000.00, that parts were stolen off of it. I owned carpentry tools, including a hand drill, router, jigsaw, sander, and so forth, but they were stored in the bilge of the boat for five years and are probably inoperable and valueless now.

Finally, when my mother passed away she established a trust for me. The lawyer of the trust said that the money was not legally mine as I have no control over it. I don't have the means to research such matters while incarcerated. Nor do I know how much money is in the trust presently. I requested financial records from the trust administrator, but the records were not provided to me.

See DE #54, page 86.

In his Reply (DE #54, page 7), Marshall paints a slightly different picture regarding the status of his assets, including his sailboat (for which he now claims to be paying "maintenance and storage" in anticipation of resuming possession thereof).

The bulk of the money in my account was recently inherited. The remainder was saved little by little out of the money I receive monthly for food, hygiene items, legal supplies, and other assorted expenses. I also have expenses that need to be paid, including maintenance and storage on a sailboat that was my home prior to my incarceration, and will probably be my home again upon my release.

In addition, Marshall presents his own BOP Commissary records from May through October 2012 reflecting substantial balances, deposits, and expenditures. (See DE #54, pages 77-79) This evidence demonstrates that Marshall is not indigent. Therefore, because of Plaintiff's untrue allegations of poverty, pursuant to 28 U.S.C. §1915(e)(2)(A), this Court must dismiss this case.

Statement of the Case

1. On December 7, 2010, the Plaintiff filed his Complaint against the Defendant alleging that he was injured by corrections officers during an encounter within the Federal Detention Center in Miami, Florida ("FDC-Miami"). This personal injury action was brought against the United States of America under the Federal Tort Claims Act, ("FTCA") Title 28, United States Code, Section 1346(b), 2671, *et seq.* Pursuant to the FTCA, any liability for torts committed by federal employees within the scope of their employment is controlled by state law. *United States v. Nunez*, 374 U.S. 150, 153 (1963). In essence, Plaintiff alleged that the Defendant (through the actions of employees of the Federal Bureau of Prisons) dropped him while carrying him on a Gurney, resulting in severe injuries. [See Docket Entry ("DE") #1].

2. On March 2, 2012, Plaintiff filed his first Motion for appointment of counsel citing 28 U.S.C. §1915(e). (D.E. #32) In support of his motion, Plaintiff asserted as follows:

He (Plaintiff) cannot afford to pay an attorney to represent him, and at this juncture he is too incapacitated with spinal damage to represent himself. He has attempted to find counsel to represent him pro bono, but several months have passed without his hearing back from organizations he contacted that represent prisoners, and does not have the informational resources to find counsel. Due to his poor health, if the Court does not appoint him counsel he will effectively be denied access to the Court or remedy for injuries he incurred while incarcerated.

3. On March 6, 2012, the Defendant filed its Response thereto citing 28 U.S.C. §1915(e) asserting that Plaintiff had failed to show exceptional circumstances to support his request for appointment of counsel.¹ The Defendant also demonstrated that Plaintiff's allegations regarding his inability to pay for an attorney to represent him were not true. (See DE #34 and #34-12)

4. On April 2, 2012, the Court denied the Plaintiff's motion finding that "[t]he factual and legal issues presented are not novel or complex." (See DE #35).

5. On September 24, 2012, Plaintiff filed his second Motion for appointment of counsel. (See DE #44).

6. On October 4, 2012, the Defendant filed its Response thereto again citing 28 U.S.C. §1915(e) asserting that Plaintiff had failed to show exceptional circumstances to support his request for appointment of counsel and also demonstrating that Plaintiff's allegations regarding his inability to pay for an attorney to represent him were not true. (See DE #46)

7. On December 17, 2012, Plaintiff filed his Reply reasserting his allegation of indigence. (DE #54).

¹In pertinent part, 28 U.S.C. §1915(e) provides as follows:

- (e)(1) The court may request an attorney to represent any person unable to afford counsel.
- (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--
 - (A) the allegation of poverty is untrue;

²According to records maintained by the Bureau of Prisons, since January 2012, Plaintiff has received deposits totaling \$3,108.45, of which \$2,271.65 was deposited during February 2012 into his inmate account. Over the last six months, he has had deposits into his account totaling \$4,332.85. Plaintiff currently has \$2,875.93 in his inmate account.

8. On March 13, 2013, the Magistrate Court held a hearing on the Plaintiff's 2nd Motion for Appointment of Counsel and other pending motions. (See DE #87). Thereafter, the Magistrate Court issued an Order denying Plaintiff's 2nd Motion for Appointment of Counsel. (See DE #89).

9. On March 27, 2013, with leave of the Court, Plaintiff was deposed. During his deposition, Plaintiff revealed that he is the beneficiary of a trust valued between \$400,000 and \$500,000. Indeed, this trust regularly funds Marshall's Prison Commissary Account and other expenses. See Excerpts of Marshall's Deposition Transcript, attached as Exhibit A.

10. On April 3, 2013, Plaintiff filed his Objections/Appeal to the Magistrate's Order denying his 2nd Motion for Appointment of Counsel and rulings on other motions. (See DE #93).

Plaintiff's Allegation of Indigence Are Untrue

As detailed above, Plaintiff's repeated allegations of indigence are untrue. As demonstrated in the Defendant's Response to Plaintiff's initial motion for appointment of counsel, Plaintiff is not indigent. Indeed, he continues to maintain a substantial cash balance in his prison commissary account. See Exhibit A; Declaration of Robin Allen (DE #46-1)³; and Exhibit B; Declaration of Jeffrey Fikes (DE #46-2), each filed in support of Defendant's Response to Marshall's 2nd Motion for Appointment of Counsel (DE #46).⁴ These records reflect that he is not indigent. In addition, at his recent deposition, Plaintiff revealed that he is the beneficiary of a trust valued between \$400,000 and \$500,000. This evidence demonstrates that Plaintiff's allegations of poverty are untrue.

In *Miller v. Brown*, 2013 WL 1346826 (S.D.Ga.), the Court considered the application of Rule 11, Federal Rules of Civil Procedure, as well as 28 U.S.C. §1915(e), in relation to a prisoner's motion to proceed *in forma pauperis*.

³Allen is the Trust Fund Specialist at the Federal Correctional Institution in Edgefield, South Carolina ("FCI-Edgefiled"). Allen has attached Plaintiff's Inmate Account records to his declaration. According to these records, since January 2012, Plaintiff has received deposits totaling \$5,465.75. His current balance (as of October 2, 2012) is \$2,333.29.

⁴Fikes is the Food Service Administrator at FCI-Edgefiled. Fikes has attached Plaintiff's commissary records to his Declaration. According to these records, since May 2012, Plaintiff has maintained a deposit balance of more than \$2,000.00, with a high balance of \$3,148.09 on September 4, 2012.

Federal Rule of Civil Procedure 11 “forbids lying in pleadings, motions, and other papers filed with the Court.” *Zocaras v. Castro*, 465 F.3d 479, 484 (11th Cir. 2006). To that end, dismissal of a case based on dishonesty in a filing with the court is an appropriate sanction under Rule 11, *See Attwood v. Singletary*, 105 F.3d 610, 613 (11th Cir. 1997)(*per curiam*)(affirming dismissal of case where plaintiff falsely represented his financial situation in motion to proceed IFP); *Hood v. Tompkins*, 197 F. App’x 818, 819 (11th Cir. 2006)(*per curiam*)(affirming district court’s dismissal of a case based on prisoner plaintiff’s failure to respond truthfully to question on form complaint about filing history. Moreover, 28 U.S.C. §1915(e)(2)(A) provides that “the court shall dismiss the case at any time if the court determines that the allegation of poverty is untrue.” Interpreting the prior version of this statute,⁵ the Eleventh Circuit Court of Appeals explained that “the purpose of this provision is to ‘weed out the litigants who falsely understate their net worth in order to obtain *in forma pauperis* status when they are not entitled to that status based on their true net worth.” *Attwood*, 105 F.3d at 613 (quoting *Matthews v. Gaither*, 902 F.2d 877, 881 (11th Cir. 1990)).

Accordingly, under both Fed.R.Civ.P. 11 and 28 U.S.C. §1915(e)(2)(A), a case should be dismissed when plaintiff makes a false statements in support of his application for leave to proceed IFP. *See Attwood*, 105 F.3d at 613; *see also Neloms v. St. Lawrence*, CV 410-022, 2010 WL 1688554, at * 1-2 (S.D.Ga. Mar. 29, 2010), *adopted sub nom by Neloms v. Al St. Lawrence Chatham Cnty. Det. Ctrs.*, CV 410-022, 2010 WL 1688548 (S.D.Ga. Apr. 23, 2010)(dismissal appropriate where a prisoner plaintiff “flagrantly misrepresented his assets” by stating in his motion to proceed IFP that he had no money in his prison trust account, had no deposits in the last six months, and that he had not received any employment income over the last twelve months, all of which was later shown not to be true).

A case should also be dismissed under 28 U.S.C. §1915(e)(2)(A), however, when, regardless of any affirmative misrepresentations, the allegation of poverty in the motion to proceed IFP is shown to be untrue by a plaintiff’s financial circumstances. *See Martin v. United States*, 317 F.App’x 869, 870 (11th Cir. 2008)(*per curiam*). Moreover, when considering a prisoner’s affidavit of indigence, “the district court may ‘inquire whether, if a prisoner has no cash credit at the moment of filing, he had disabled himself by a recent drawing on his account and if so, for what purposes.’” *Collier v. Tatum*, 722 F.2d 653, 655 (11th cir. 1983)(quoting *Evans v. Croom*, 650 F.2d 521, 525 (4th Cir. 1981).

For example, in *Martin*, a district court did not err in dismissing a case on the ground that the allegation of poverty was untrue where a prisoner plaintiff had only \$33.36 in his prison account on the date he signed his motion, but had \$1,818.00 in deposits over the preceding six months and a maximum balance of \$358.61 in the preceding 30 days. *See* 317 F.App’x at 870-71. Indeed, as noted in *Martin*, the district court had found in a prior lawsuit filed by this plaintiff, in which he submitted the same exact information, that his allegation of poverty was untrue and dismissed that case without prejudice as well. *Id.*, at 870. In denying his motion for reconsideration in the prior case, the district court observed that the plaintiff “had sufficient funds to prosecute this action but chose to spend those funds on

⁵28 U.S.C. §1915(d) formerly provided that courts “may dismiss the case [if] the allegation of poverty is untrue.” *See Attwood*, 105 F.3d at 613.

matters other than this litigation.” *Martin v. Zenk*, 1:06-CV-3065, doc. No. 16 (N.D.Ga. July 2, 2007). Similarly, in *Neloms*, the court found dismissal appropriate not only because the plaintiff misrepresented his assets, but because “he has accumulated more than enough money to prosecute this action but instead chose to spend those funds on other matters.” 2010 WL 1688554, at * 2. In that case, the plaintiff had \$395.00 deposited in his trust account in the preceding six months, but his present trust account balance when he filed suit was just over \$200.00. *Id.*

Miller, 2013 WL 1346826, 1-2.

As demonstrated above, Plaintiff is not indigent. BOP commissary records alone reveal that he does have access to substantial assets. Marshall also owns and maintains a sailboat (“that was my home prior to my incarceration, and will probably be my home again upon my release”). Moreover, at his recent deposition, Plaintiff revealed that he is the beneficiary of a trust valued between \$400,000 and \$500,000. This evidence demonstrates that Plaintiff’s allegations of poverty are untrue. Accordingly, pursuant to 28 U.S.C. §1915(e)(2)(A), dismissal of this case is required.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By s/ Charles S. White
CHARLES S. WHITE
Fla. Bar No. 394981
Assistant United States Attorney
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-24338-CIV-COOKE/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 12, 2013 I electronically filed the forgoing document with the Clerk of the Court using CM/ECF. I also certify that the forgoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By s/ Charles S. White
CHARLES S. WHITE
Fla. Bar No. 394981
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SERVICE LIST
MARSHALL v. UNITED STATES OF AMERICA
Case No. 10-24338-CIV-COOKE/Turnoff
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

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Plaintiff *pro se*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 10-24338-CIV-MGC/Turnoff

ANDREW D. MARSHALL,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

33 Northeast 4th Street
Miami, Florida 33132
Wednesday, March 27, 2013
10:11 a.m. - 3:00 p.m.

DEPOSITION OF ANDREW MARSHALL

Taken before Rinele Abramson, Notary
Public in and for the State of Florida at
Large, pursuant to Notice of Taking Deposition
filed in the above cause.

- - - - -

1 APPEARANCES:

2

3 On behalf of the Plaintiff:

4 Andrew D. Marshall (Pro se)
5 Federal Detention Center Miami
6 33 Northeast 4th Street
7 Miami, Florida 33132

6

7 On behalf of the Defendant:

8 Assistant United States Attorney
9 99 Northeast 4th Street
10 Miami, Florida 33132
11 BY: CHARLES WHITE, ESQUIRE

10

11

12 ALSO PRESENT:

12

13 Elizabeth Garcia, Esquire (via telephone)

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I N D E X

WITNESS: ANDREW MARSHALL PAGE:
DIRECT EXAMINATION BY MR. WHITE: 4

- - -

E X H I B I T S

- - -

EXHIBIT NO: PAGE:
Defendant's Exhibit No. 1 131

1 Thereupon:

2 ANDREW MARSHALL,
3 was called as a witness, and after being first
4 duly sworn, was examined and testified under
5 oath as follows:

6 DIRECT EXAMINATION

7 BY MR. WHITE:

8 Q. Is there any reason we should not
9 proceed at this point?

10 A. Again, I don't know your questions.
11 I will do the best I can, and will supplement
12 anything you ask, if you make a copy of the
13 question. With a paper and pen, it can be
14 written down and I'll get you the answer
15 myself. If you have an extra pen and paper, I
16 will be glad to do that.

17 I don't know if there is any reason
18 not to proceed. I don't know what your
19 questions are. It's up to you.

20 Q. We are here to take your deposition
21 in accordance with the court order in the case
22 that you caused to be filed against the United
23 States. It appears before Judge Cooke under
24 Case Number 10-24338, Civil.

25 You are familiar with that

1 left your work at the City of Miami, up until
2 you were arrested in July of 2007, what other
3 employment did you have?

4 A. I'm sorry; I'm spacing out a little
5 bit. Can you repeat it?

6 Q. Sure.

7 You indicated you quit working for
8 the City of Miami in late 2002. I'm assuming
9 that's December.

10 A. Correct.

11 Q. You were arrested in the summer, I
12 want to say, July of 2007.

13 A. Right.

14 Q. What work did you do between those
15 two dates?

16 A. I tried to do work on boats at one
17 point. I found that I really wasn't doing it.
18 I really couldn't do it. It was very easy
19 work a friend of mine had given me, but just
20 getting up to the fly bridge to do where the
21 work was, I couldn't manage it.

22 Let me think. I didn't work very
23 much.

24 Q. How did you support yourself between
25 2002, the end of it, when you left your work

1 at the City, and your arrest in July of 2007?

2 A. At one point in time, I was staying
3 with a friend who took care of my food and put
4 a roof over my head. I wasn't rowing in and
5 out. I couldn't. It was too strenuous for
6 me. I kept on aggravating my cervical
7 condition, to the point where I couldn't -- so
8 I was supported at that point in time.

9 Shortly thereafter, I inherited some
10 money from my grandmother.

11 Q. How much money did you inherit from
12 your grandmother?

13 A. You know what, I don't remember at
14 this point. It was -- it might have been -- I
15 got three figures coming in my head. I don't
16 think it was the lower. I think it might have
17 been 25,000, something like that, somewhere in
18 the neighborhood.

19 Q. When did you inherit \$25,000 from
20 your grandmother?

21 A. I'm guessing, as I remember it, 2004
22 or so.

23 Q. Where does that money maintain?

24 A. That money, actually, I used to live.
25 I used to survive with. I also used it to

1 pursue legal actions with --

2 Q. In some of your pleadings you made
3 reference to a trust or trust fund. Is that
4 what you were talking about?

5 A. No, that's not a part of a trust.
6 That was separate.

7 Q. Is there a separate amount of money
8 in a trust?

9 A. There is. When my mother died --
10 prior to my mother dying, a trust was set up
11 for me.

12 Q. When did your mother pass?

13 A. Approximately 2006.

14 Q. Prior to her death, she set up a
15 trust with you as a beneficiary?

16 A. Correct.

17 Q. Do you know how much is in that
18 trust?

19 A. I don't. I don't have the paperwork.
20 At the time, it was in the neighborhood of
21 400,000 to 500,000.

22 Q. What are the terms of that trust, if
23 you know?

24 A. What are the terms of it in what
25 sense?

1 Q. Are you allowed to draw the principal
2 or are you only allowed to draw out certain
3 amounts?

4 A. Basically, my brother and my sister
5 were put as an administrator of the trust.
6 It's not money that's within my control, first
7 of all, okay. I don't think there is any -- I
8 don't recall any kind of limitation in terms
9 of principal or interest, you know, being off
10 limits, but it was up to my brother and my
11 sister how to administrate it. It was left to
12 their discretion.

13 I don't know if that answers your
14 question. I don't know what else you are
15 looking for.

16 Q. When was the first time you started
17 drawing on the trust that was left to you by
18 your mother?

19 A. Actually, it was -- my mom was
20 sending me a little bit of money, I think \$100
21 a month prior to that, prior to her dying.
22 That was -- I was living on -- I don't even
23 know if that was continuing. I think I was
24 living on food stamps for that period of time.
25 The trust, maybe 2006. I don't know.

1 Q. What's the most you've ever received
2 from the trust at any one time?

3 A. Generally -- I think I was receiving,
4 and I don't remember this. I may not be
5 accurate in my memory on this. I think I was
6 receiving \$800 a month on the trust. That's
7 not necessarily the most I've ever received.
8 I think I received money for an outboard
9 engine at one point, to help me get back and
10 forth to shore.

11 Q. Would that be a high watermark, in
12 terms of the amount drawn on the trust?

13 A. For some reason, I'm thinking it was
14 \$2,000 that I had received. Actually, I
15 remember, but --- you know what, I don't know.
16 I don't remember.

17 I think there was something else that
18 was involved at that point in time. I think
19 my scooter had broken, so I bought an
20 inexpensive, \$1,000 motorcycle.

21 Q. The money that you inherited from
22 your grandmother, I think you said \$25,000.

23 Where is that?

24 A. Where is that? I used that to live
25 over the course of a year, year and a half. I

1 paid back Steve Bickle, the portion of the
2 money I borrowed from him. I bought a scooter
3 with it to get around, living expenses, court
4 filing expenses.

5 Q. How much is left?

6 A. Of that money, there is no money
7 left.

8 Q. Where was it maintained?

9 A. What was the name of the bank? I
10 think it might have been NationsBank.

11 Q. With regard to the trust, where is
12 the trust maintained?

13 A. I don't know at the moment. It was
14 SmithBarney, but I was told it was removed
15 from SmithBarney, and I'm not sure where it
16 was changed to.

17 Q. What is the name of your brother and
18 your sister, who manage this trust for you?

19 A. Peter Marshall and Jennifer Marshall.

20 Q. Where do they live?

21 THE WITNESS: Let me ask you
22 something. Is this -- I'll object for my
23 attorney that isn't present. This is
24 going a little bit beyond this cause of
25 action.

1 MR. WHITE: Your objection is noted.

2 BY MR. WHITE:

3 Q. Where do they live?

4 A. Actually, my brother, I think, moved
5 to Brooklyn.

6 Q. Is he a lawyer?

7 A. No, he isn't. He is a financial
8 analyst, I guess he would describe himself as,
9 the last time we spoke.

10 Q. And your sister?

11 A. My sister has a number of different
12 professions. The last time, her major
13 profession was a professor at Cornell
14 University.

15 Q. Is she a lawyer?

16 A. She is not a lawyer, no.

17 Q. Are there any other sources of income
18 that you have?

19 A. Sources of income, no. I had
20 attempted -- was thinking of starting up
21 different businesses. I've done a little bit
22 of work on different businesses. I was going
23 to start a consulting company dealing with
24 public records. I would receive like \$40 or
25 \$60 from someone to pursue it. Nothing took

1 off.

2 Q. Are there any other assets that you
3 have, other than those you described earlier?

4 A. At this point in particular, probably
5 not. Tools, but I don't know where they are.
6 They were left on the boat for ten years,
7 closed up. Nothing to speak of.

8 Q. Do you know any real estate?

9 A. No.

10 Q. No other vehicles beyond the scooter
11 and the boat that you told us about?

12 A. Motorcycle. And I heard that that
13 had an accident and was, you know --

14 Q. What year was the motorcycle?

15 A. '96.

16 Q. What kind?

17 A. Honda CR 125.

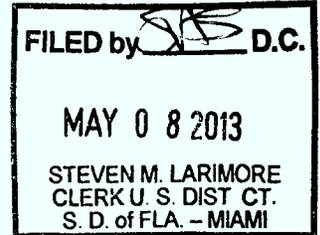
18 Q. What did you pay for it?

19 A. I think 1,400. Maybe 1,200. I don't
20 recall the exact figure.

21 Q. Following the incident involving the
22 utility vehicle, as you've described, from the
23 time that you were arrested, was there any
24 physician that you spoke with, who advised you
25 that you were incapable or disabled from

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 10 24338 CV COOKE/TURNOFF



ANDREW DAVID MARSHALL,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS
PURSUANT TO 28 UNITED STATES CODE § 191.(e)(2)(A)
(FOR UNTRUE ALLEGATIONS OF POVERTY)

PLAINTIFF MARSHALL, pro se, hereby responds in opposition to Defendant's Motion to Dismiss Pursuant to 28 United States Code, §191.(e)(2)(A) (For Untrue Allegations of Poverty)(ECF # 98). Defendant's allegations are not valid factually or legally, as explained below.

BACKGROUND

This is a Federal Tort Claim Action arising over spinal damage I incurred while a pretrial detainee at FDC Miami. Due to a variety of factors that make it infeasible for me to prosecute this action pro se while incarcerated, I filed Plaintiff's 2nd Motion for Appointment of Counsel (ECF # 44). Appointment of counsel was requested pursuant to 28 U.S.C. § 1915 on the basis of indigency. Subsequently I submitted a six month history of my prison account and an Affidavit (in Support of my Motion to Proceed in Forma Pauperis) to Plaintiff's Reply to Defendant's Response to Plaintiff's 2nd Motion for Appointment of Counsel (ECF # 54, at Exhibit "A"). For the Court's convenience these documents are also attached here as Exhibit "A".

The 2nd Motion for Appointment of Counsel was denied by Magistrate Turnoff (Order, ECF # 89) without appropriate due process or valid justification, whereby I appealed the denial to Judge Cooke (ECF # 93). As far as I know the appeal has not been ruled upon. It is under these circumstances that the defense now moves to dismiss this action based on what it falsely claims are my "untrue allegations of poverty."

PLAINTIFF'S ALLEGATION OF INDIGENCE IS NOT UNTRUE

The Defendant claims that my allegation of indigency is untrue on the basis that I have "a substantial cash balance in my prison commissary account" and because I am the "beneficiary of a trust valued between \$400,000.00 and \$500,000.00." Motion, at page 5. The defense concludes that "[t]his evidence demonstrates that Plaintiff's allegations of poverty are untrue." Id. In support of its position the defense cites Miller v. Brown, 2013 WL 1346826 (S.D.Ga.)(considering the application of dismissal pursuant to Rule 11 and 28 U.S.C. § 1915 on the basis of an untrue allegation of poverty supporting a motion to proceed in forma pauperis).

However, the defense's factual assertions here selectively omit critical facts and is not an accurate portrayal of my financial situation. With regards to my having money in my prison account, it was accurately represented by the inmate account history I submitted to the Court that I had \$2822.84 in the account. What the defense omits is that my motion set forth that the money in the account was being used (or would be used in the near future) to support myself, to pay for upkeep and/or storage on my vessel/home, to pay for research related to litigation (in this and other cases), to pay for a medical expert in this case, and for other legal expenses. As explained in my Reply to Defendant's Response to Plaintiff's 2nd Motion for Appointment of Counsel, the money in my prison account was not sufficient for these purposes, and not enough to pay attorney fees to represent me in this action. I paid the filing fee in this case, and have only requested appointment of counsel on the basis of indigency, as payment for counsel is beyond my financial means.

My representations regarding having money in my prison account, as well as my expenses and liabilities, were neither untrue nor improper. I am not required to be destitute to be indigent for purposes of 28 U.S.C. § 1915. See Martinez v. Kristi Cleaners, Inc., 34 F.3d 130 (11th Cir. 2004) (An affidavit addressing the statutory language should be accepted by court, absent a serious misrepresentation, and need not show that litigant is "absolutely destitute" to qualify for indigent status under 28 U.S.C. §1915. Such an affidavit will be held sufficient if it represents that litigant, because of litigant's poverty, is unable to pay for court fees and costs, and to support and provide necessities for himself and his dependents; in other words, the statute is not

to be construed such that potential litigants are forced to become public charges or abandon their claims because of the filing fee requirements)(internal citations omitted). The Court held that Martinez was indigent despite a monthly income of \$880 and \$300 in the bank. See also Tammera v. Grossman, 2010 U.S. Dist. Lexis 32641 (DC NJ)(Founder of business was allowed to proceed in forma pauperis where his affidavit of poverty established that 87 year old founder had income of \$2,632.92 per month while founder's expenses were #13,465, and he had obtained high interest reverse mortgage simply to cover his monthly property tax expenses).

With regards to my being a beneficiary of a trust valued at hundreds of thousands of dollars, my mother did establish a trust to provide me with food, medical care, housing, and other necessities. But the principal in the trust does not belong to me. The attorney who formulated the trust indicated that the money is not legally mine as I have no control over it. See Affidavit at Attachment, ¶ 5. I have no control over how the principal is allocated or invested. I don't even know how much money is in the trust, or which financial institution it is presently deposited in and/or is in control of its investment. My mother's will directs my brother and sister to administer the trust, and provides that they are to inherit the principal when I die. My mother also expressly directed them not to disperse money to me for lawyers. So the principal in trust for me is not personal assets that I've concealed from the Court, as fictitiously and malevolently portrayed by AUSA Charles White.

Rather, as indicated in the Affidavit (at § 1) and verified by my account history, I receive \$400 a month from the trust. As much as \$300 or more of this \$400 is spent on the prison commissary for food and legal supplies, and my estimated expenditures total \$465 a month. Id at ¶ 8. The money in my prison account reflects \$1,800 that I inherited from my father upon his death, and

1. As memory serves this attorney's name is Bing. Prison authorities have obstructed my access to numerous legal and personal records, which include my mothers will, the attorney's name, and records regarding his representation that the trust is not my money. Consequently these records cannot be attached here. Also, I recall reporting to AUSA Charles White at my deposition that the trust attorney indicated that it was not my money on the basis that I have no control over it. This was either edited out of the transcript of my deposition, or not included in the pages of the deposition attached to Defendant's Motion.

that I have saved money out of the \$400 a month I receive from the trust. These savings occurred primarily at times when the prison restricted me from buying commissary as a disciplinary sanction (typically for petty or fictitious offenses), or because food items and legal items were out of stock.

Other money simply has not been paid out yet. For example, I have a backlog of research that needs to be done. I recently found a researcher, but prison staff deducted money from my account, but did not send it to the researcher for payment of services, and obstructed records the researcher mailed to me, so until these problems are resolved the money accumulates in my account. Additionally, in order to save money for a medical expert and legal research, I had to hold off on maintenance on my vessel even though this will require larger outlays of money for maintenance in the future. Some of the savings are also needed to pay outstanding fines in my criminal case. Reply at page 6; Affidavit attachment at page 2.

The estimate of my monthly expenditures at \$465 also does not include a number of different expenses I am saving for, such as the fee for a medical expert in this case (which is going to be absolutely necessary to counter Defendant's medical experts). I estimate that a medical expert will cost substantially more than what I currently have. See Affidavit attachment at page 2; Reply at page 5. I can't be specific regarding the cost of an expert at this time, as this is one of the matters that needs to be researched (when prison staff stop obstructing my research efforts). I am also in the process of having my sailboat/home put into a boat storage yard in order to safeguard it for when I'm released from prison, which will entail additional expenses. See Reply at page 6; unexecuted storage contract for vessel, attached here as Exhibit "B".

The defense also claims that my ownership of a sailboat and motorcycle indicates that I am not indigent. Motion, page 2. But as I have stated repeatedly, the boat is my home, and the motorcycle my only means of transportation. The sailboat was my sole residence for over a decade, and if I am physically able to do so upon my release from prison, it will be my home again. It is shelter for me, and as such is a necessity. With rents what they are, living on a boat at anchor is more economical than living in an apartment. This sailboat is not a luxury yacht, but a small boat worth approximately \$4000 in its current state of disrepair. Similarly, the motorcycle, which is worth

approximately \$1000, is a necessity for me to get around with as I am physically disabled and cannot walk well enough to use public transportation. It is my only means of getting around to shop locally for food and other necessities. Due to disability a motorcycle is far from ideal for me, but my family refused to provide me a cheap used automobile out of the trust, and consequently it is an absolute necessity for me.

Ownership of a home and basic transportation does not demonstrate that a person is not indigent under § 1915. For example, the Court in Martinez found the Plaintiff to be indigent despite her possession of a car, and the Court in Tammera allowed in forma pauperis status to a property owner with monthly expenses of more than \$13,000. A person simply does not have to be "'absolutely destitute' to qualify for pauper status under section 1915." Bloch v. Regions Bank, 2012 U.S. Dist. Lexis 94374 (M.D. FL)(citing Martinez, 34 F.3d at 1307)(citing Adkins v. E.I. DuPont de Nemours & Co., 33 U.S. 331, 339 (1948)). In Adkins the Court explained: "To say that no persons are entitled to the statute's benefits until they have sworn to contribute to payment of costs, the last dollar they have or can get, and thus make their dependents wholly destitute, would be to construe the statute in a way that would throw its beneficiaries into the category of public charges... We think a construction of the statute achieving such consequences is an inadmissible one."

The defense relies upon Miller v. Brown, supra, a recent case which I don't have access to on the prison law library computer. If it is unpublished, I ask the defense to provide me a copy. In any case, in its Motion the defense includes a page long single spaced quote from Miller, and clearly what this case and the cases cited therein concern is individuals who flagrantly misrepresented their assets, whereas I have not made untrue statements about my assets, and it does not appear that the defense is accusing me of lying about my assets.

Rather, the defense seems to be arguing that because my assets show that I am not indigent, my affidavit is untrue and therefore should be dismissed pursuant to 1915(e)(2)(A). In this regard Miller cites Martin v. United States, 317 F.App'x 869 (11th Cir. 2008)(per curiam). However, in Martin the Court dismissed a prisoner's complaint without prejudice on the basis that his indigency affidavit was submitted in another action, and in that other action

the Court determined that "plaintiff had sufficient funds to prosecute this action but chose to spend those funds on matters other than this litigation." Id. at 870. In the case where plaintiff resubmitted the affidavit, the Court explained: "Martin is not unfamiliar with the rules applicable to in forma pauperis applications. And Martin was on notice from his earlier submission of these documents that they failed to support his allegations of poverty. Fully advised of the inadequacy of his affidavit and prison trust statement to establish indigency, Martin relied on these documents without adding explanation or otherwise seeking to refute the district court's earlier rejection of these materials in Martin v. Zenk." Id. at 871.

The facts in Martin do not apply here. The affidavit in this case was previously submitted with regards to my criminal appeal, but it resulted in me being granted a waiver of filing fee and transcript costs. See United States v. Marshall, 07-20569-CR-JAL, Order DE # 673. Moreover, other than necessities such as commissary food and preserving my home, my money is spent (or is being saved to be spent) almost exclusively on legal actions I'm a party in. It needs to be stressed here as well that my commissary food purchases are an absolute necessity, as almost all of the food the BOP serves is not compliant with my religion (Ch'an Buddhism), and the BOP refuses to accommodate my religious dietary practices, whereby I am forced to buy food on commissary to survive.

Nor do the other cases cited in Martin have any factual or legal bearing to this case. In Attwood v. Singletary, 105 F.3d 610 (11th Cir. 1997), Attwood filed an affidavit indicating he had "no access to, control over, or income from any bank account since 1991, and that he owned no real estate or other valuable property." Id. at 611. The Court determined that "Attwood intentionally misstated his income to obtain indigent status and filed this claim in bad faith." Id. The Court further observed that "Attwood has filed at least sixty one claims in the District Court for the Southern District of Florida," and that "he has been equally litigious in the Northern District of Florida," regularly bringing suits on the same factual grounds, changing only the venue and the names of the defendants." Id.

Similarly, in Neloms v. St. Lawrence, CV 410-022, 2010 WL 1688554, (S.D.Ga. Mar. 29, 2010), adopted sub nom by Neloms v. Al St. Lawrence Chatham Cnty Det. Ctrs., CV 410-022, 2010 WL 1688548 (S.D.Ga. Apr. 23, 2010), plaintiff

Chatham represented that "he had no money in his prison trust account and had made no deposits in the past six months," whereas the Court determined that in actuality "he had over \$800 deposited in this trust account since April 29, 2009, and \$395 of that amount was deposited in his account during the six months prior to his filing suit."

In summary, the defense seems to have two main arguments. First, they argue that I misrepresented having a trust worth hundreds of thousands of dollars, but as discussed above the money in the trust is not under my control or legally mine. The defense has offered no argument or evidence in this regard that indicates otherwise. Second, the defense suggests that because I have money in my prison account, a sailboat, and a motorcycle, that I am not indigent and therefore that my claim of poverty is untrue and warrants dismissal. This view is not correct, not only because it does not account for my expenses and liabilities, but because it would result in every case being dismissed in which in forma pauperis relief was denied, even cases where indigence was a close call or an honest mistake was made. This is not what Martin and the cases cited therein stand for. The unifying principle in these cases is that flagrant misrepresentations of poverty in a § 1915 context warrant dismissal. There were no flagrant misrepresentations here.

Quite the reverse is the case. AUSA White has chosen to disregard what I stated in the record and to him verbally about my not having control or ownership over the money in the trust. Affidavit, attachment at ¶ 5; Deposition, ECF 98-1, at page 114:4-12. AUSA White also disregards information in the record as to money in my prison account being saved for upcoming legal expenses and living necessities for myself. See Affidavit; Reply, pages 5-6. In short, he ignored and twisted the facts for illegitimate purposes.

Finally, the defense further claims that I admitted to concealing assets, which is one of the most egregious factual distortions made by AUSA White. This allegation relates to my stating in the affidavit that I gave away property to friends [a year or two prior to my arrest] due to rogue City of Miami officials threatening to murder me [in retaliation for my filing lawsuits against the City of Miami, as well as for being a whistleblower and activist]. Taking these threats seriously, I gave away my sailboat, motorcycle, and other belongings to friends, with the understanding that it was theirs if I was murdered (or

otherwise died). As stated in my affidavit, "The property was to be held for me in the event I survived, with the transfer of ownership upon my demise." However, in 2012 one of the friends I was leaving property to claimed ownership of the sailboat. Not knowing whether the sailboat was still mine, I declared the sailboat in the Affidavit as a possible asset and declared its estimated value; I explained the situation in order to ensure full disclosure. Affidavit, attachment at ¶ 5. I also declared the motorcycle as my vehicle. Affidavit at ¶ 5.

AUSA White claims these circumstances represent wrongdoing on my part, as follows: "Astonishingly, Marshall also acknowledges his efforts to conceal his assets from lawful authorities as well as to reclaim them 'in the event I survived.'" Motion at page 2. This is an absolute distortion of the factual record. Obviously, if I intended to conceal assets I would not have openly disclosed those assets in my Affidavit.

2. Additionally, after I was incarcerated, a handful of guards threatened me and got physical with me without a valid reason for doing so, and caused me pain and physical injury (one such instance being at issue in this lawsuit). Moreover, for several weeks I went without food due to injuries rendering me physically unable to get to the food line. At the time prison personnel refused to provide me medical care or a wheelchair. Several guards were aware of this and let it continue, telling me they did not care if I died. It seemed to me at the time that there was a good likelihood I was going to die in prison, and sent several thousand dollars to a friend to hold for me and to use for emergencies (e.g., to prevent the sailboat from sinking), while also instructing him that I wanted him to have the money should I die in prison. This money was stolen from him by a third party. In order to replace the money, he sold a parcel of land to a friend who was looking after my boat, but the guy looking after the sailboat took the land without paying for it, claiming that I owed him money for maintenance on the boat (which was untrue). I have not been able to recoup the money.

3. Relatedly, the defense points out that my picture of boat expenses changed slightly from the Affidavit to my Reply, which is true. In the former I estimated monthly maintenance costs for the boat, and in the latter discussed maintenance and storage costs. The difference is due to changing circumstances, namely my having a falling out with the guy who was looking after the boat. He claimed the vessel was his and at the same time was trying to charge me exorbitant maintenance costs for the sailboat. He also refused to tell me where the sailboat was being moored (/anchored). This period of time is covered in the Affidavit attachment at ¶ .. Consequently I began looking for someone to care for the boat and to find a place to store it. Shortly thereafter he dropped the sailboat off with a friend of mine who is elderly and not in the

CONCLUSION

I requested appointment of counsel because I am unable to afford an attorney and because I have not been able to find an attorney to represent me pro bono or on a contingency basis. I did not request waiver of the filing fee in this case, and paid the fee as I could afford to do so without undue hardship. I have a limited amount of money saved for a medical expert in this case, for research in this and two other cases, as well as for necessities; but my savings are not likely sufficient to cover the cost of a medical expert, let alone a medical expert and the cost of an attorney. I receive \$400 a month, and my necessary expenditures (had I the money to pay them all and save for legal expenses) exceeds that amount. My assets, which consist primarily of a motorcycle and a sailboat (/home) are necessities for me due to disability, my inability to earn a living, and my upcoming release from prison and need for a home and transportation. Due to lack of maintenance and upkeep the market value of the motorcycle and sailboat is also probably less than the declared value, and probably not sufficient to cover the combined cost of an expert and an attorney. While a trust has been established to assist me with my basic needs (thus far excluding transportation), neither the principal or interest in the trust is mine or under my control.

The defense has distorted the factual record in these regards, and failed to set forth an authentic factual or legal basis for dismissal under either Rule 11 or Rule 28 U.S.C. § 191.(e)(2)(A). Rather, AUSA White has ignored and twisted the facts to create additional work, and thereby caused me to waste three full days researching and preparing this response.

WHEREFORE, for the foregoing reasons, the Court is urged to deny Defendant's Motion to Dismiss.

best health. More specifically, the boat was anchored in a waterway in the same town where my elderly friend lives, and I did not think that he was physically capable of looking after a boat at anchor. So the need for boat storage has evolved due to changing circumstances which occurred shortly before my Reply. This said, I have not indicated that I am paying storage at this juncture. It is taking time to research boat storage options from prison, and I just received my first copy of a storage contract last week. But in any case my point was that necessary monthly expenditures are greater than money I am receiving monthly, and that the money I've saved is not enough to cover both my legal expenses and monthly expenditures for basic necessities.



Andrew Marshall, pro se
Reg. No.: 78814 004
FDC Miami
P.O. Box 019120
Miami, FL 33101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May 2013, a copy of the foregoing was mailed to AUSA Charles White, at the U.S. Attorney's Office, 99 Northeast 4th Street, Miami, FL 33132.



Andrew Marshall, pro se
Reg. No.: 78814 004
FDC Miami
P.O. Box 019120
Miami, FL 33101

EXHIBIT "A"

All Transactions



Inmate Reg #:	78814004	Current Institution:	Edgefield FC1
Inmate Name:	MARSHALL ANDREW	Housing Unit:	EDG-D-B
Report Date:	10/17/2012	Living Quarters:	D05-201L
Report Time:	2:32:20 PM		

<u>Date/Time</u>	<u>Transaction Type</u>	<u>Amount</u>	<u>Ref#</u>	<u>Payment#</u>	<u>Balance</u>
10/16/2012 10:55:37 AM	<u>Sales - Fingerprint</u>	(\$20.30)	62		\$2,563.49
10/16/2012 5:15:38 AM	Lockbox - CD	\$3.95	70119201		\$2,583.79
10/15/2012 8:31:36 PM	BP 199 Request	(\$9.98)	227		
10/13/2012 8:01:16 PM	BP 199 Request	(\$50.40)	209		
10/11/2012 8:00:43 AM	Books	(\$21.35)	49	79	\$2,579.84
10/11/2012 8:00:43 AM	BP 199 Request - Released	\$21.35	49		
10/9/2012 4:09:20 PM	TRUL Withdrawal	(\$15.00)	TL1009		\$2,601.19
10/9/2012 11:49:52 AM	<u>Sales - Fingerprint</u>	(\$112.10)	90		\$2,616.19
10/8/2012 2:04:36 PM	TRUL Withdrawal	(\$5.00)	TL1008		\$2,728.29
10/5/2012 8:24:41 AM	BP 199 Request	(\$21.35)	49		
10/2/2012 2:08:25 PM	Western Union	\$400.00	33312276		\$2,733.29
10/2/2012 1:47:16 PM	Release Funds	(\$33.90)	4886	34	\$2,333.29
10/2/2012 1:47:16 PM	BP 199 Request - Released	\$33.90	4886		
10/2/2012 1:29:32 PM	Books	(\$36.25)	4873	31	\$2,367.19
10/2/2012 1:29:32 PM	BP 199 Request - Released	\$36.25	4873		
10/2/2012 1:29:16 PM	Books	(\$31.30)	4872	30	\$2,403.44
10/2/2012 1:29:16 PM	BP 199 Request - Released	\$31.30	4872		
10/2/2012 1:12:51 PM	Subscriptions	(\$26.85)	4845	18	\$2,434.74
10/2/2012 1:12:51 PM	BP 199 Request - Released	\$26.85	4845		
10/1/2012 11:36:04 AM	TRUL Withdrawal	(\$15.00)	TL1001		\$2,461.59
10/1/2012 11:04:18 AM	<u>Sales - Fingerprint</u>	(\$73.25)	3		\$2,476.59
9/26/2012 9:54:32 PM	Phone Withdrawal	(\$10.00)	TFN0926		\$2,549.84
9/25/2012 3:55:08 PM	BP 199 Request	(\$33.90)	4886		
9/25/2012 3:54:26 PM	BP 199 Request - Released	\$33.90	4885		
9/25/2012 3:54:04 PM	BP 199 Request	(\$33.90)	4885		
9/25/2012 10:18:30 AM	BP 199 Request	(\$36.25)	4873		
9/25/2012 10:17:03 AM	BP 199 Request	(\$31.30)	4872		
9/24/2012 2:28:04 PM	Books	(\$34.30)	4775	2961	\$2,559.84
9/24/2012 2:28:04 PM	BP 199 Request - Released	\$34.30	4775		
9/24/2012 9:49:15 AM	<u>Sales - Fingerprint</u>	(\$49.75)	41		\$2,594.14
9/23/2012 4:09:05 PM	TRUL Withdrawal	(\$10.00)	TL0923		\$2,643.89
9/22/2012 12:13:13 PM	BP 199 Request	(\$26.85)	4845		
9/18/2012 9:16:29 AM	TRUL Withdrawal	(\$10.00)	TL0918		\$2,653.89
9/17/2012 9:37:25 AM	TRUL Withdrawal	(\$10.00)	TL0917		\$2,663.89
9/15/2012 10:31:59 AM	TRUL Withdrawal	(\$10.00)	TL0915		\$2,673.89
9/14/2012 8:51:16 AM	<u>Sales - Fingerprint</u>	(\$17.70)	16		\$2,683.89
9/13/2012 5:20:37 PM	BP 199 Request	(\$34.30)	4775		
9/12/2012 8:38:43 AM	TRUL Withdrawal	(\$30.00)	TL0912		\$2,701.59
9/10/2012 2:52:49 PM	TRUL Withdrawal	(\$30.00)	TL0910		\$2,731.59
9/10/2012 1:09:30 PM	FRP Quarterly Pymt	(\$100.00)	LFRP0912		\$2,761.59
9/10/2012 10:40:52 AM	Books	(\$23.35)	4566	2797	\$2,861.59
9/10/2012 10:40:52 AM	BP 199 Request - Released	\$23.35	4566		
9/10/2012 9:34:32 AM	<u>Sales - Fingerprint</u>	(\$7.50)	24		\$2,884.94
9/10/2012 9:31:12 AM	<u>Sales - Fingerprint</u>	(\$225.65)	23		\$2,892.44
9/10/2012 3:00:02 AM	BP 199 Request - Released	\$33.90	4315		
9/9/2012 8:32:45 PM	TRUL Withdrawal	(\$5.00)	TL0909		\$3,118.09
9/9/2012 1:25:56 PM	TRUL Withdrawal	(\$5.00)	TL0909		\$3,123.09
9/5/2012 8:11:09 PM	TRUL Withdrawal	(\$2.00)	TL0905		\$3,128.09
9/5/2012 9:49:40 AM	TRUL Withdrawal	(\$5.00)	TL0905		\$3,130.09
9/4/2012 8:55:04 AM	<u>Sales - Fingerprint</u>	(\$13.00)	1		\$3,135.09

All Transactions



Inmate Reg #:	78814004	Current Institution:	Edgefield FCI
Inmate Name:	MARSHALL, ANDREW	Housing Unit:	EDG-D-B
Report Date:	10/17/2012	Living Quarters:	D05-201L
Report Time:	2:32:28 PM		

<u>Date/Time</u>	<u>Transaction Type</u>	<u>Amount</u>	<u>Ref#</u>	<u>Pavment#</u>	<u>Balance</u>
9/2/2012 1:59:27 PM	TRUL Withdrawal	(\$5.00)	TL0902		\$3,148.09
9/1/2012 8:04:08 AM	TRUL Withdrawal	(\$5.00)	TL0901		\$3,153.09
8/31/2012 8:28:51 AM	BP 199 Request	(\$23.35)	4566		
8/29/2012 7:01:49 PM	Phone Withdrawal	(\$3.00)	TFN0829		\$3,158.09
8/28/2012 2:06:31 PM	Western Union	\$400.00	33312241		\$3,161.09
8/27/2012 12:32:07 PM	TRUL Withdrawal	(\$2.00)	TL0827		\$2,761.09
8/27/2012 11:11:52 AM	Sales - Fingerprint	(\$42.30)	60		\$2,763.09
8/24/2012 6:14:17 AM	TRUL Withdrawal	(\$2.00)	TL0824		\$2,805.39
8/23/2012 3:16:13 PM	TRUL Withdrawal	(\$2.00)	TL0823		\$2,807.39
8/22/2012 1:17:04 PM	TRUL Withdrawal	(\$2.00)	TL0822		\$2,809.39
8/22/2012 11:46:04 AM	Sales - Fingerprint	\$0.00	93		\$2,811.39
8/22/2012 10:54:02 AM	Sales - Fingerprint	\$0.00	63		\$2,811.39
8/21/2012 9:44:43 PM	TRUL Withdrawal	(\$2.00)	TL0821		\$2,811.39
8/21/2012 1:03:15 PM	Inmate Co-pay	(\$2.00)	LICP0812		\$2,813.39
8/20/2012 12:26:41 PM	TRUL Withdrawal	(\$2.00)	TL0820		\$2,815.39
8/20/2012 9:22:40 AM	Sales - Fingerprint	(\$44.55)	30		\$2,817.39
8/16/2012 7:47:50 PM	TRUL Withdrawal	(\$2.00)	TL0816		\$2,861.94
8/16/2012 10:41:25 AM	Books	(\$34.75)	4118	2651	\$2,863.94
8/16/2012 10:41:25 AM	BP 199 Request - Released	\$34.75	4118		
8/15/2012 5:12:07 AM	Lockbox - CD	\$6.95	70115001		\$2,898.69
8/14/2012 11:44:02 AM	TRUL Withdrawal	(\$2.00)	TL0814		\$2,891.74
8/13/2012 4:02:31 PM	TRUL Withdrawal	(\$2.00)	TL0813		\$2,893.74
8/13/2012 9:20:49 AM	Sales - Fingerprint	(\$9.80)	20		\$2,895.74
8/13/2012 6:50:30 AM	BP 199 Request - Released	\$17.76	4314		
8/10/2012 4:47:41 PM	BP 199 Request	(\$33.90)	4315		
8/10/2012 4:47:03 PM	BP 199 Request	(\$17.76)	4314		
8/4/2012 10:49:42 AM	TRUL Withdrawal	(\$5.00)	TL0804		\$2,905.54
8/3/2012 6:50:16 PM	TRUL Withdrawal	(\$2.00)	TL0803		\$2,910.54
7/31/2012 9:11:58 AM	Sales - Fingerprint	(\$67.90)	73		\$2,912.54
7/31/2012 6:45:16 AM	BP 199 Request	(\$34.75)	4118		
7/30/2012 3:07:19 PM	Western Union	\$400.00	33312212		\$2,980.44
7/29/2012 7:38:13 PM	TRUL Withdrawal	(\$2.00)	TL0729		\$2,580.44
7/25/2012 1:39:06 PM	TRUL Withdrawal	(\$5.00)	TL0725		\$2,582.44
7/24/2012 10:22:18 AM	TRUL Withdrawal	(\$5.00)	TL0724		\$2,587.44
7/23/2012 2:16:48 PM	TRUL Withdrawal	(\$2.00)	TL0723		\$2,592.44
7/23/2012 11:07:04 AM	Sales - Fingerprint	(\$86.90)	86		\$2,594.44
7/21/2012 5:13:33 AM	Lockbox - CD	\$282.75	70113301		\$2,681.34
7/16/2012 3:00:05 PM	TRUL Withdrawal	(\$2.00)	TL0716		\$2,398.59
7/16/2012 11:49:19 AM	Sales - Fingerprint	(\$88.35)	99		\$2,400.59
7/14/2012 6:34:20 PM	TRUL Withdrawal	(\$2.00)	TL0714		\$2,488.94
7/12/2012 6:33:29 PM	TRUL Withdrawal	(\$2.00)	TL0712		\$2,490.94
7/11/2012 9:55:54 PM	TRUL Withdrawal	(\$2.00)	TL0711		\$2,492.94
7/11/2012 10:59:11 AM	Books	(\$41.25)	3766	2332	\$2,494.94
7/11/2012 10:59:11 AM	BP 199 Request - Released	\$41.25	3766		
7/11/2012 10:23:51 AM	TRUL Withdrawal	(\$2.00)	TL0711		\$2,536.19
7/10/2012 9:26:54 AM	TRUL Withdrawal	(\$2.00)	TL0710		\$2,538.19
7/9/2012 9:22:00 AM	Sales - Fingerprint	(\$94.30)	32		\$2,540.19
7/7/2012 8:27:17 AM	TRUL Withdrawal	(\$2.00)	TL0707		\$2,634.49
7/6/2012 10:41:10 AM	BP 199 Request	(\$41.25)	3766		
7/5/2012 8:42:19 AM	Release Funds	(\$20.00)	3656	2294	\$2,636.49

All Transactions



Inmate Reg #: 78814004 Current Institution: Edgefield FCI
 Inmate Name: MARSHALL, ANDREW Housing Unit: EDG-D-B
 Report Date: 10/17/2012 Living Quarters: D05-201L
 Report Time: 2:32:43 PM

<u>Date/Time</u>	<u>Transaction Type</u>	<u>Amount</u>	<u>Ref#</u>	<u>Payment#</u>	<u>Balance</u>
7/5/2012 8:42:19 AM	BP 199 Request - Released	\$20.00	3656		
7/5/2012 8:22:55 AM	Books	(\$26.25)	3698	2286	\$2,656.49
7/5/2012 8:22:55 AM	BP 199 Request - Released	\$26.25	3698		
7/4/2012 2:14:22 PM	Phone Withdrawal	(\$10.00)	TFN0704		\$2,682.74
7/3/2012 7:27:41 AM	TRUL Withdrawal	(\$2.00)	TL0703		\$2,692.74
7/2/2012 9:42:59 AM	<u>Sales - Fingerprint</u>	(\$101.65)	38		\$2,694.74
7/1/2012 8:23:42 AM	TRUL Withdrawal	(\$2.00)	TL0701		\$2,796.39
6/30/2012 4:26:05 PM	BP 199 Request	(\$26.25)	3698		
6/29/2012 2:53:32 PM	TRUL Withdrawal	(\$2.00)	TL0629		\$2,798.39
6/29/2012 12:07:16 PM	Western Union	\$400.00	33312181		\$2,800.39
6/28/2012 8:34:08 AM	Books	(\$34.25)	3624	2236	\$2,400.39
6/28/2012 8:34:08 AM	BP 199 Request - Released	\$34.25	3624		
6/28/2012 8:16:21 AM	Release Funds	(\$16.97)	3468	2228	\$2,434.64
6/28/2012 8:16:21 AM	BP 199 Request - Released	\$16.97	3468		
6/27/2012 9:05:21 AM	TRUL Withdrawal	(\$2.00)	TL0627		\$2,451.61
6/26/2012 5:03:30 PM	TRUL Withdrawal	(\$2.00)	TL0626		\$2,453.61
6/26/2012 2:10:34 PM	BP 199 Request	(\$20.00)	3656		
6/25/2012 12:50:08 PM	<u>Sales - Fingerprint</u>	(\$136.95)	37		\$2,455.61
6/24/2012 9:00:32 PM	TRUL Withdrawal	(\$2.00)	TL0624		\$2,592.56
6/22/2012 5:53:42 PM	TRUL Withdrawal	(\$2.00)	TL0622		\$2,594.56
6/22/2012 7:14:46 AM	BP 199 Request	(\$34.25)	3624		
6/20/2012 1:22:41 PM	<u>Sales - No FP (Non-FP Session)</u>	(\$11.95)	69		\$2,596.56
6/12/2012 1:23:25 PM	TRUL Withdrawal	(\$2.00)	TL0612		\$2,608.51
6/11/2012 9:41:42 AM	<u>Sales - Fingerprint</u>	(\$54.40)	58		\$2,610.51
6/9/2012 3:45:18 PM	TRUL Withdrawal	(\$2.00)	TL0609		\$2,664.91
6/8/2012 2:56:24 PM	BP 199 Request	(\$16.97)	3468		
6/8/2012 10:33:44 AM	Payroll - IPP	\$5.25	LIPP0512		\$2,666.91
6/7/2012 12:46:58 PM	TRUL Withdrawal	(\$2.00)	TL0607		\$2,661.66
6/6/2012 10:16:16 AM	Release Funds	(\$25.00)	3322	2052	\$2,663.66
6/6/2012 10:16:16 AM	BP 199 Request - Released	\$25.00	3322		
6/2/2012 9:48:10 PM	TRUL Withdrawal	(\$2.00)	TL0602		\$2,688.66
6/2/2012 3:40:03 PM	TRUL Withdrawal	(\$2.00)	TL0602		\$2,690.66
6/1/2012 8:49:36 AM	Release Funds	(\$30.00)	3236	2021	\$2,692.66
6/1/2012 8:49:36 AM	BP 199 Request - Released	\$30.00	3236		
5/31/2012 1:06:59 PM	Western Union	\$400.00	33312152		\$2,722.66
5/31/2012 11:08:06 AM	TRUL Withdrawal	(\$5.00)	TL0531		\$2,322.66
5/30/2012 9:42:04 AM	BP 199 Request	(\$25.00)	3322		
5/30/2012 7:09:21 AM	TRUL Withdrawal	(\$2.00)	TL0530		\$2,327.66
5/29/2012 9:36:00 AM	<u>Sales - Fingerprint</u>	(\$149.15)	47		\$2,329.66
5/27/2012 11:46:33 AM	TRUL Withdrawal	(\$5.00)	TL0527		\$2,478.81
5/25/2012 8:51:59 AM	TRUL Withdrawal	(\$2.00)	TL0525		\$2,483.81
5/24/2012 7:12:18 PM	TRUL Withdrawal	(\$2.00)	TL0524		\$2,485.81
5/23/2012 10:41:55 AM	<u>Sales - Fingerprint</u>	(\$37.25)	52		\$2,487.81
5/22/2012 5:13:04 AM	Lockbox - CD	\$27.35	70109101		\$2,525.06
5/21/2012 6:11:48 PM	TRUL Withdrawal	(\$2.00)	TL0521		\$2,497.71
5/17/2012 5:07:21 PM	BP 199 Request	(\$30.00)	3236		
5/15/2012 10:29:23 AM	TRUL Withdrawal	(\$2.00)	TL0515		\$2,499.71
5/14/2012 10:43:00 AM	<u>Sales - Fingerprint</u>	(\$42.40)	28		\$2,501.71
5/10/2012 11:42:41 AM	<u>Sales - Fingerprint</u>	(\$138.95)	49		\$2,544.11
5/10/2012 10:09:50 AM	Transfer - In from TRUFACS	\$2,683.06	TX051012		\$2,683.06

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 ANDREW DAVID MARSHALL,)
)
 Defendant.)
)
)
)
)
)

DEFENDANT MARSHALL'S AFFIDAVIT IN SUPPORT
OF MOTION TO PROCEED IN FORMA PAUPERIS

Affidavit in Support of Motion	Instructions
<p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot pay for needed transcripts/filing fee/attorney fee. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p>
<p>Signed: <u></u></p>	<p>Date: <u>10/4/12</u></p>

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Self-employment	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Income from real property (such as rental income)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Interest and dividends	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Gifts	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Alimony	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Child support	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Retirement (such as social security, pensions, annuities, insurance)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Disability (such as social security, insurance payments)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Unemployment payments	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Public-assistance (such as welfare)	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Other (specify): Trust	\$ 400.00	\$ N/A	\$ 400.00	\$ N/A
Total monthly income:	\$ 400.00	\$ N/A	\$ 400.00	\$ N/A

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A

4. How much cash do you and your spouse have? \$ 583.60

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
N/A	N/A	\$ N/A	\$ N/A
N/A	N/A	\$ N/A	\$ N/A
N/A	N/A	\$ N/A	\$ N/A

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	Other real estate	Motor vehicle #1
(Value) \$ N/A	(Value) \$ N/A	(Value) \$ 1,000.00
N/A	N/A	Make and year: <u>Honda/</u>
		Model: <u>250cc Motorcycle</u>
		Registration #: <u>Unknown</u>

Motor vehicle #2	Other assets	Other assets
(Value) \$ N/A	(Value) \$	(Value) \$
Make and year: N/A		
Model: N/A		
Registration #: N/A		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$ N/A
	\$	\$ N/A
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A

7. State the persons who rely on you or your spouse for support.

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home)	\$ N/A	\$ N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		

Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ N/A	\$ N/A
Home maintenance (repairs and upkeep)	\$ 80.00	\$ N/A
Food	\$ 250.00	\$ N/A
Clothing	\$ 5.00	\$ N/A
Laundry and dry-cleaning	\$ N/A	\$ N/A
Medical and dental expenses	\$	\$ N/A
Transportation (not including motor vehicle payments)	\$ N/A	\$ N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ 30.00	\$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$ N/A	\$ N/A
Life:	\$ N/A	\$ N/A
Health:	\$ N/A	\$ N/A
Motor vehicle:	\$ N/A	\$ N/A
Other:	\$ N/A	\$ N/A
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$ N/A	\$ N/A
Installment payments		
Motor Vehicle:	\$ N/A	\$ N/A
Credit card (name):	\$ N/A	\$ N/A
Department store (name):	\$ N/A	\$ N/A
Other:	\$ N/A	\$ N/A
Alimony, maintenance, and support paid to others	\$ N/A	\$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ N/A	\$ N/A
Other (specify): Legal Expenses	\$ 100.00	\$ N/A
Total monthly expenses:	\$ 465.00	\$ N/A

Attachment

5. I am not sure whether certain items are assets of mine, or their value. Due to concern that local or federal governments or their agents might kill me, I gave away my possessions prior to being incarcerated, as well as money and property after incarceration, in the event that I was killed. The property was to be held for me in the event I survived, with the transfer of ownership upon my demise

This property includes a sailboat that served as my home for over ten years. I estimate that prior to my arrest it was worth between \$3,000.00 and \$5,000.00. I've been incarcerated over 5 years, and believe the vessel has likely deteriorated considerably since then. I have not seen it in years, and have no way of estimating its current value. The individual overseeing the vessel claims ownership of it on the one hand, and says it is mine on the other. However, he does not answer my questions about the vessel, and I do not presently know where it is located. However, the title remains in my name.

The situation is similar with regards to other property I own or owned. I owned a motorcycle that was worth approximately \$1,000.00, but have no idea whether it still runs and was recently informed that parts were stolen off of it. I owned carpentry tools, including a hand drill, router, jigsaw, sander, and so forth, but they were stored in the bilge of the boat for five years and are probably inoperable and valueless now. Also, the government seized some of my belongings, but this property has not been returned to me thus far. It includes a used computer, miscellaneous gun parts, and various other low dollar items.

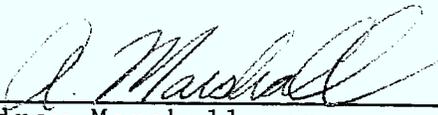
Finally, when my mother passed away she established a trust for me. The lawyer of the trust said that the money was not legally mine as I have no control over it. I don't have the means to research such matters while incarcerated. Nor do I know how much money is in the trust presently. I requested financial records from the trust administrator, but the records were not provided to me.

6. I am not sure who to include as people owing me money, and am concerned that excluding someone might act to waive an encumbrance. Nor do I have access to my personal records, and having been incarcerated for over five years, can't remember details as to who owes me money and how much. This said, I do not believe that those who owe me money will ever repay me. I believe that local and federal governments owe me money for various torts and injuries, but such matters have not been adjudicated in my favor at this time. I also believe that Derek Lewis owes me a refund of money paid to him as attorney fees in this case, but he refused to compensate me.

8. The "Medical and dental expenses" section was left blank because the amount is not known at this time. I have extensive spinal damage, and a lawsuit related to these injuries, and anticipate a medical evaluation and treatment recommendations in the near future. In all likelihood surgery will be needed, as well as an electric wheel chair. Surgery is tens of thousands of dollars, and an electric wheelchair is estimated to cost approximately \$1000.00.

The space for "Other" is specified as "Legal Expenses" at \$100.00 a month. On average I spend at least \$100.00 a month on legal expenses, but there are times that my legal expenses far exceed that sum. Presently one of my civil actions is close to going to trial, and money will needed to be allocated to expert fees and other expenses related to trial preparations and trial. Medical experts alone will probably cost several thousand dollars. Such expenses are not figured in to my monthly outlays. Also not included as a monthly expense is the \$500.00 fees assessed against me at sentencing.

11. No, but I have been making payments for services related to other cases I'm a party to. At times such services related to other cases I am a party to. Such expenditures have amounted to approximately \$500.00 for a particular month.



Andrew Marshall, pro se
Reg. No.: 78814-004
Edgefield Camp
P.O. Box 725
Edgefield, SC 29824

EXHIBIT "B"

Gibson Dry Dock, Inc.

Opposite Beacon No. 12 South of Palatka
114 Cedar Street San Mateo FL 32187
Tel: 386.325.5502 www.gibsondrydock.com Email: info@gibsondrydock.com

AGREEMENT BETWEEN BOATYARD AND BOAT OWNER

This Agreement is between Gibson Dry Docks, Inc. (Yard) and the boat owner identified below (Owner).

Owner and Boat Information: Owner provides the following personal information

Boat owner: _____ Boat name: _____

Mailing Address: _____

Boat Description: _____ Registration: _____

Telephone: Home _____ Work _____

Mobile _____ Email _____

Owner agrees to pay:

\$ 150.00 for haul and launch

\$ 107.00 for cradle set up

\$ _____ per day for layover beginning
24 hours after haul.

In the event Boat is to be stored, Owner also agrees to pay:

\$ 330.00 per quarter in advance for

(Circle one) Dry storage Docksides Banksides

GENERAL RULES AND LIABILITY

Legal Notice: Owner has supplied the above mailing address and hereby promises to provide written notice to Yard of any address change so that Yard will always be able to provide legal notice to Owner. Owner agrees that a mailing to the above (or updated address) constitutes legal notice to Owner.

Sling and Cradle Placement: Owner assumes exclusive responsibility for location of lift slings and cradle supports on boat hull and represents that Boat will sustain loads imposed by the slings and cradle supports. Owner or Owner's agent must be present in order to give direction for placement of lift slings and cradle supports.

Cradle Adjustments: Owner may not adjust or tamper with the boat cradle.

Repairs: Yard provides a location for passive storage and does not repair boats. Yard allows only minor repairs to Boat by Owner. No work by third party can be performed without special permission of the Yard. Owner assumes sole risk for self-repairs to his or her boat, as well as sole responsibility for third party work requested by Owner, notwithstanding that Yard may have granted permission for such work.

Pets: Well-behaved pets are allowed on premises, but become the responsibility of Owner who has brought or allowed the pet to be on premises. The pet must be under Owner's control at all times.

Security: The Yard does not furnish security. Owner will secure all valuables and assumes responsibility for the care and protection against loss or damage of any kind to boat (including gear, fixtures, equipment and contents).

Overnights: No one is allowed to live aboard a Boat.

Default: If Owner is six months or more in arrears in payment to the Yard, Owner hereby acknowledges that (without further notice to Owner) he or she will have abandoned the stored Boat (in either wet or dry dock), which will then become a derelict vessel on the property of the Yard. In that event, Owner's signature below will serve to authorize the appropriate authorities to transfer the title to the Boat and its contents to Yard as salvor. Yard shall then have the right to either destroy or dispose of the Boat, or sell and pass good title to the Boat to a third party purchaser with the proceeds of the sale going towards payment of the deficiency to Yard.

Deficiency: Owner's abandonment of the Boat and the transfer of title to the Yard as salvor shall not extinguish Owner's liability for payment of the amounts agreed to above. The Yard may obtain a judgment against Owner for the amounts owed, plus the amount of reasonable expenses incurred to destroy or dispose of the Boat. In the event the Yard sells the Boat, the reasonable expenses incurred to make the Boat saleable and the reasonable expenses incurred for the sale shall be added to the deficiency. The deficiency will then be offset by the proceeds of the sale for determining the amount of the deficiency judgment to be entered in the appropriate public records against Owner. In the event the sale proceeds exceed Owner's deficiency (including reasonable expenses), the excess shall be paid by Yard to Owner.

Indemnity: Owner agrees to indemnify and hold the Yard harmless from all claims, damages and liabilities arising from the possession, use or non-use of the boat or boat slip. The indemnity includes, but is not limited to, the negligence or improper conduct of Owner or his or her agents, employees, invitees or suppliers. Owner will reimburse Yard for all attorney fees and costs incurred for the enforcement of any part of this agreement.

I have read and agree to all terms stated herein.

Signature, Owner



Signature, Representative, Yard

THIS LOOKS TO BE THE
BEST PLACE TO PUT YOUR
BOAT ON HAND IF YOU WANT
TO DO SO. IT IS LOCKED
CLOSE RT ~~17~~ & RT 100, THERE
IS NO FENCE ON YARD, BUT LOOK
SAFE. THE BOAT YARD SEZALS
MILES NORTH OF THE BOAT THIS
EZEY TO TAKE THE BOAT THERE.

GARY