

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
Edgefield
Federal Correctional Institution
Inmate Mail/Parcels
Post Office Box 725
Edgefield, SC 29824
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 Library 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)
06/07/2013	<u>100</u>	Change of Address NOTICE by Andrew D. Marshall (yar) (Entered: 06/10/2013)
07/22/2013	<u>101</u>	PRETRIAL STIPULATION <i>Unilateral</i> by United States of America (Attachments: # <u>1</u> Supplement Defendant's Trial Witness List, # <u>2</u> Supplement Defendant's Trial Exhibit List, # <u>3</u> Exhibit Exhibit A: Letter to Plaintiff inviting cooperation, # <u>4</u> Exhibit Exhibit B: Plaintiff's acknowledgment of correspondence receipt)(White, Charles) (Entered: 07/22/2013)
07/23/2013	<u>102</u>	NOTICE Of Filing Re: Pre-Trial Stipulation by United States of America re <u>101</u> Pretrial Stipulation, <u>58</u> Scheduling Order, Order Referring Case to Mediation,,,, (Attachments: # <u>1</u> Exhibit (Plaintiff's Response to Defendant's Invitation to Participate in drafting Pre-Trial Stipulation))(White, Charles) Text Modified on 7/23/2013 (cqs). (Entered: 07/23/2013)
07/26/2013	<u>103</u>	Writ of Habeas Corpus ad Testificandum Issued as to ANDREW D. MARSHALL, Reg No.78814-004 for hearings beginning on 8/21/13. Signed by Judge Marcia G. Cooke on 7/26/2013. (im) (Entered: 07/26/2013)
07/29/2013	<u>104</u>	SUPPLEMENT to <u>101</u> Pretrial Stipulation, <u>103</u> Writ of Habeas Corpus ad Testificandum Issued by United States of America (White, Charles) (Entered: 07/29/2013)

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>PTF DEF</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 2</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>Foreign Nation</td> <td><input type="checkbox"/> 3</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	PTF DEF	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5			Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6		
Citizen of This State	<input checked="" type="checkbox"/> 1	PTF DEF	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF DEF	<input type="checkbox"/> 4	<input type="checkbox"/> 4																		
Citizen of Another State	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

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

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
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**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
CHARLES S. WHITE
Fla. Bar No. 394981
Assistant United States Attorney
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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

Andrew D. Marshall, *Pro Se*
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Miami, FL 33177
Plaintiff *pro se*

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Attorney for Defendant

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.

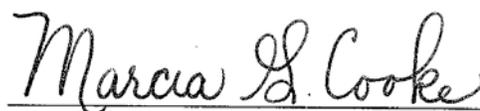
from the Clerk's office.

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.

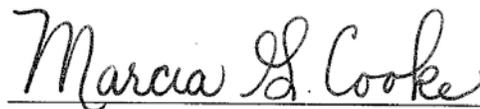
8. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Rule 16.2.B.6, or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise 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’ allegations of poverty are untrue. Accordingly, pursuant to 28 U.S.C. §1915(e)(2)(A), dismissal of this case is required.

Respectfully submitted,

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UNITED STATES ATTORNEY

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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,

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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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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