Dear AOUSC[1] —

I have previously written to you regarding the standards for IFP status, and the improper judicial collection of and demand for information not permitted by 28 U.S.C. § 1915.[2] My understanding of the current status of my proposals is that the Civil Rules Committee recently established a sub-committee to look into it further, and that, based on other such projects, a final outcome (i.e. Supreme Court issuance of a Rules Enabling Act order) is roughly 3–5 years away.

I currently have IFP status in multiple courts.[3] Two of these appointed counsel based on the combination of my poverty and disability. I am also seeking IFP status in other pending cases.[4] I am not a prisoner.

Earlier this week, I asked my partner of 14 years whether he would marry me. He said yes.[5]

This should be an occasion for untarnished celebration. Alas…

You stand directly in the way of my prospective marriage.

As I have explained before, the IFP forms and standards in current United States federal practice, including those promulgated by the AOUSC, have multiple fundamental defects:

1. they lack *any* objective reference criteria by which an applicant can know whether they qualify, and are in fact administered in an arbitrary and capricious manner;
2. they ask for information for which there is no adequate legal definition *in this context*, exposing the affiant to liability for perjury, dismissal, or IFP denial; and
3. they ask for information which the statute does not authorize the courts to demand.

I do not wish to wait many years on the uncertain prospect of a Rules Enabling Act rulemaking before I am able to marry my fiancé; nor do I wish to give up my IFP status or appointed counsel. You are directly responsible for the harm of this dilemma, and I am therefore asking you to fix it promptly, i.e. at least as fast as it would take to litigate for an injunction. I will therefore discuss only the aspects of this issue that directly interfere with my prospective marriage.

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[1] By "AOUSC", I mean to include the Judicial Conference and its general, civil and appellate rules committees.

[2] *See* 19-AP-C/19-CR-A/19-CV-Q. *See also* briefs in *Sai v. USPS*, 135 S. Ct. 1915, No. 14-646 (2015) (BIO req'd, cert. denied):
Cert. pet. https://s.ai/ifp/Sai%20v%20USPS%20SCOTUS%20Petition%20for%20certiorari.pdf
Maryland Volunteer Lawyers Service *amicus*
https://s.ai/ifp/Sai%20v%20USPS%20SCOTUS%2014-646%20Amicus%20brief%20for%20Sai%20on%20cert%20-%20Maryland%20Volunteer%20Lawyers%20Service.pdf
Western Center on Law and Poverty & the Legal Aid Association of California *amici*
https://s.ai/ifp/Sai%20v%20USPS%20SCOTUS%2014-646%20Amicus%20brief%20for%20Sai%20on%20cert%20-%20Western%20Center%20on%20Law%20and%20Poverty%20and%20Legal%20Aid%20Association%20CA.pdf
BIO https://s.ai/ifp/Sai%20v%20USPS%20SCOTUS%2014-646%20USPS%20Brief%20in%20opposition%20to%20cert.pdf
Reply https://s.ai/ifp/Sai%20v%20USPS%20SCOTUS%20Petition%20for%20certiorari.pdf

[3] D. D.C. No. 1:14-cv-403, N.D. CA. No. 3:16-cv-1024, & 9th Cir. No. 20-15615

[4] e.g. D. D.C. No. 1:20-1314, 1st Cir. No. 15-2356, D. MA. No. 1:15-cv-13308

[5] The marriage would take place in England, where we currently live together. I am a U.S. citizen. My partner is a Canadian citizen. We have previously resided, as a couple, in multiple U.S. states. Applicable law is, thus, complex.

1. *AOUSC forms and (implied) rules unlawfully require disclosure of a spouse's financial information.*

AO 239 & FRAP Form 4[6] demand that an IFP applicant disclose, usually on public record, a wide-ranging array of information *about their spouse*, namely:

1. Last 12 months' average monthly income, and expected next month's income, from:
    a. Employment
    b. Self-employment
    c. Income from real property
    d. Interest and dividends
    e. Gifts[7]
    f. Alimony[8]
    g. Child support[9]
    h. Retirement (such as social security, pensions, annuities, insurance)
    i. Disability (such as social security, insurance payments)
    j. Unemployment payments
    k. Public-assistance (such as welfare)[10]
    l. Other (specify)[11]
2. Employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.), including
    a. Employer
    b. Address
    c. Dates of employment
    d. Gross monthly pay
3. Cash[12]

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[6] AO 240 (standard district court IFP short form) does *not* request spousal information, and I therefore do not challenge it on those grounds here.

[7] Gifts are *not* considered "income" by the LSC, 45 C.F.R. § 1611.2(i) ("Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.")
They are also not considered "income" by the IRS, 26 U.S.C. §§ 368(d)(2)(B), 911 (excluding (b) "foreign earned income"; (c) "housing cost amount". It is not "earned income", § 911(d)(2)(A). It is not taxable income, IRS Pub. 525 (2019) p. 32 § "Gifts and inheritances". Neither are, e.g., "court awards and damages", *id.* p. 30.

[8] Starting in 2019, alimony is not considered "income" by the IRS. Pub. 525 (2019), p. 1, *referencing* Pub. 504.

[9] Child support is not considered "income" by the IRS. *Id.* p. 30.

[10] Considering welfare as "income" for IFP purposes is clearly prohibited by *Adkins v. DuPont*, 335 U.S. 331, 339 (1948): "To say that no persons are entitled to the statute's benefits until they have sworn to contribute to payment of costs, the last dollar they have or can get, and thus make themselves and their dependents wholly destitute, would be to construe the statute in a way that would throw its beneficiaries into the category of public charges. The public would not be profited if relieved of paying costs of a particular litigation only to have imposed on it the expense of supporting the person thereby made an object of public support."

[11] There is no definition whatsoever of "income", for IFP purposes, sufficient to give a party fair notice as to what might count as "other income". As noted above, the existing elements directly contradict the definitions of "income" by the IRS and LSC, so those standards are of no help to the affiant. This is a plain violation of constitutional due process, and is arbitrary and capricious.

[12] This question makes no distinction between separate or joint assets. For the record, I do not know how much cash my

   a. Financial institution
   b. Type of account
   c. Amount your spouse has
4. The assets, and their values, which you own or your spouse owns [(except] clothing and ordinary household furnishings[)].[13]
   a. Home (Value)
   b. Other real estate (Value)
   c. Motor vehicle (Value)
      i. Make and year
      ii. Model
      iii. Registration #
   d. Other assets (Value)
5. Every person, business, or organization owing you or your spouse money, and the amount owed.
   a. Person owing you or your spouse money
   b. Amount owed to your spouse
6. Persons who rely on you or your spouse for support.
   a. Name (or, if under 18, initials only)
   b. Relationship
   c. Age
7. Average monthly expenses
   a. Rent or home-mortgage payment (including lot rented for mobile home)
      i. Are real estate taxes included?
      ii. Is property insurance included?
   b. Utilities (electricity, heating fuel, water, sewer, and telephone)
   c. Home maintenance (repairs and upkeep)
   d. Food
   e. Clothing
   f. Laundry and dry-cleaning
   g. Medical and dental expenses
   h. Transportation (not including motor vehicle payments)
   i. Recreation, entertainment, newspapers, magazines, etc.
   j. Insurance (not deducted from wages or included in mortgage payments)
      i. Homeowner's or renter's:
      ii. Life:
      iii. Health:
      iv. Motor vehicle:
      v. Other:

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fiancé has; I don't *want* to know; and I will not make any effort whatsoever to find out in order to satisfy any court's or public's mere curiosity. As is my right, I utterly decline to act in any way as an informant on my fiancé (/ spouse).
If there is a lawful reason for a court to delve into my fiancé's finances, then it has a clearly established means to do so: by issuing a letter rogatory under the Hague Service Convention (to which the US, UK, and Canada are signatories), in compliance with all applicable Canadian, UK, and US privacy law. I do not believe any such attempt would succeed, as there is no lawful reason to demand such information from him, and such an inquiry would be unjustifiable.

[13] *Ibid.*

k. Taxes (not deducted from wages or included in mortgage payments) (specify):
l. Installment payments
    i. Motor vehicle:
    ii. Credit card (name):
    iii. Department store (name):
    iv. Other:
m. Alimony, maintenance, and support paid to others
n. Regular expenses for operation of business, profession, or farm (attach detailed statement)
o. Other (specify)[14]

Literally *none* of this disclosure of a spouse's information is authorized by law.

To the contrary, it is expressly prohibited by a wide range of privacy laws in the US, UK, and Canada (absent showings of the proportionality and necessity of invasion of the spouse's privacy, such as those required to obtain a subpoena, that are not met here).

Among other laws, it is illegal under the GDPR and the UK Data Protection Act 2018 for me to disclose such information to a third party, let alone to the public, without my partner's consent. As a matter of EU & UK law, an "consent" under coercion is invalid, and which expressly includes the threat of any negative legal repercussion from a failure to "consent". It is, therefore, illegal for me to disclose my spouse's information on an IFP application, and I absolutely refuse to do so.[15]

Even if his consent wasn't impossible as a matter of law, my fiancé is a very private person. He does not wish to be the focus of any public attention or scrutiny, nor to have his information disclosed to the public. I will not violate his trust, and I will actively assert the full extent of any spousal or other privilege, and all applicable law, that is available to me to protect his privacy.

Current AOUSC forms and rules mean that my obedience of laws protecting my spouse's privacy would result in the denial of my IFP status. This is unlawful. A court may not coerce a violation of law, nor condition a benefit on the waiver of a right.

This is, of course, in addition to the fact that there is simply no statutory basis whatsoever for this requirement, and the courts may not make a demand without a sufficient legal basis for doing so.

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[14] Again, there is *no* definition of what constitutes "expenses", and as above, the AOUSC clearly does not follow IRS or LSC definitions. Therefore, it is a violation of due process to demand an accounting of "other expenses", as there is no adequate notice (indeed, no notice *at all*) as to what is included or excluded by that term.

[15] It is completely immaterial to me whether I have a realistic risk of prosecution, civil or criminal, by the government or my partner. I will not violate laws with which I agree. I am not motivated by fear of prosecution, but rather by very deeply held principles and religious convictions. I absolutely refuse to be coerced into violating such laws or principles, and have a demonstrated history of sticking to my convictions even in the face of severe harm, difficulties to myself, and attempts at coercion. As to matters of principle, I am simply not coercible.
Moreover, I cannot respect any court or government that would actively undermine the just laws of allied nations, or disregard its own just treaties.
Contrast Aérospatiale v. S.D. Iowa, 482 US 522 (1987) (approving US courts' disregard for the Hague Evidence Convention as to corporate objectors, on the basis that the corporation was unlikely to actually be prosecuted for the court's command to violate foreign law).

2. *If my fiancé's assets were considered despite their nonavailability, I would wrongly lose IFP status.*

Although I qualify for IFP status, my intended spouse does not.[16]

If a court were to consider my spouse's financial resources as if they were my own, I would be denied IFP status, and obligated to withdraw it in all my pending cases. This could lead to severe negative repercussions for me: financially, medically, and legally.

My fiancé and I have always kept separate finances, and broadly speaking, we intend to continue doing so after marriage. We intend to sign a prenuptial agreement which would provide for us to have a mixture of separate and jointly held assets (including e.g. joint financial accounts). The prenup would expressly prohibit the use of jointly held assets to fund any litigation, unless both of us are co-parties. Therefore, any assets in such joint accounts would *not* be "actually available" to me, which is the only kind of asset that is reasonably relevant to an IFP application.

In particular, I do not wish to burden my partner with expenses related to my litigation. To my view, protecting my partner from harm is an essential aspect of marriage. Due to my strong belief in, and practice of, robust public-interest litigation, I choose to expose myself to legal liabilities. My choice to risk and endure poverty[17] where it is necessary to vindicate my other interests is *mine*, not my partner's, and I will not have it thrust upon him due to our marriage.

Simultaneously, I have my own liberty interest in being free to live and litigate as I see fit, without his direction or control (which would inevitably be involved if I were forced to use his funds); and to have access to court-appointed counsel (which I doubt he could afford).

Beyond the above, I do not wish to disclose anything further about my arrangements with my partner, nor the reasons for them. How and why we manage our private affairs is nobody's business but ours. The courts have no right to interfere with our mutually-desired private affairs, including financial contracts. To the contrary, they must *enforce* our agreements.

I admit one limited exception: for the purposes of IFP qualification, jointly held assets that are actually and currently available to me for the purposes of funding litigation[18] count towards whether I am or am not poor.[19] However, assets belonging to someone else (including my spouse), which are not liquid, or not lawfully available to me for use towards litigation expenses (e.g. due to the provisions of an LLP or prenup contract), do *not* count. I am the IFP applicant, not my spouse.

Similarly, my marital status is a protected category, and may not be used as a basis for denying me access to a statutory right.[20]

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[16] There is currently *no* publicly known standard for what the judiciary considers as sufficient, necessary, or prohibitive for IFP qualification. Therefore, I am here assuming that "qualification" follows the LSC's standards, as I set forth in 19-AP-C/19-CR-A/19-CV-Q. I will not disclose any more fine-grained detail about my spouse's finances than the mere fact of being above the disqualifying cut-offs.

[17] Obviously, I would rather not be poor, but given my present situation, I am not able to be otherwise.

[18] *Cf.* Legal Services Corporation regulations, 45 C.F.R. § 1611.2(d, i) (only household assets and income that are "currently and actually available to the applicant" may be considered).

[19] These are, and I expect will remain, zero.

[20] I do not object to *strictly voluntary* use that would benefit the applicant, e.g. consideration of spousal support or

Relevant law

1. *Both marriage and poverty trigger strict scrutiny.*

Fundamental rights are subject to strict scrutiny. *Planned Parenthood v. Casey*, 505 U.S. 833, 929 (1992). Marriage is a fundamental right, protected by the due process clause of the 14th Amendment. *Lawrence v. Texas*, 539 U.S. 558, 579 (2003) (quoting J. Stevens' dissent in *Bowers v. Hardwick*, 478 U.S. 186, 216 (1986)) & *Loving v. Virginia*, 388 U. S. 1, 12 (1967)

Most restrictions on marriage are subject to strict scrutiny; in particular, the government's interest in protecting the public fisc "cannot justify" its infringement. *Zablocki v. Redhail*, 434 U.S. 374, 383–89, 389 (1978), *citing Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535, 541 (1942), *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974), & *Boddie v. Connecticut*, 401 U.S. 371 (1971).

Discrimination on the basis of wealth is also subject to strict scrutiny. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 20 (1973).

2. *The IFP statute does not permit any inquiry into an applicant's spouse.*

28 U.S.C. § 1915(a)(1) is the *sole* statutory basis for inquiry into non-prisoner litigants. It states:

> Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

There is not a single mention of the word "spouse", "household", or any related term in the section. Congress is extremely well versed in making such distinctions, and expressly did so in e.g. laws governing the IRS, Social Security, welfare, and numerous other areas of law. Not here.

The IFP statute's silence as to spouses is a prohibition; *incluso unius est exclusio alterius*.

3. *The IFP statute does not permit any inquiry into a non-prisoner applicant's financial details at all, absent good cause to suspect perjury.*

The awkward phrase in (a)(1), "an affidavit that includes a statement of all assets such prisoner possesses", was inserted by the Prison Litigation Reform Act of 1995, Pub. L. 104-134 title VIII, at § 804(a)(1)(C).[21] There is no textual indication that the Act was intended to alter non-prisoners'

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alimony costs as detracting from disposable income.

[21] SEC. 804. PROCEEDINGS IN FORMA PAUPERIS.

(a) FILING FEES.—Section 1915 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "(a) Any" and inserting "(a)(1) Subject to subsection (b), any";

(B) by striking "and costs";

litigation in any way. The *entirety* of that Act is a regulation of litigation *by prisoners*. So is the awkward extra-affidavit clause in (a)(1), which refers to "such prisoner", rather than the interrupted "a person" clause which sets the requirement for IFP affidavits generally.

The pre-PLRA statute, 28 U.S.C. § 1915 (1995), was[22] as follows (in entirety):

> § 1915. Proceedings in forma pauperis
>
> (a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.
>
> An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.
>
> (b) Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.
>
> (c) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.
>
> (d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.
>
> (e) Judgment may be rendered for costs at the conclusion of the suit or action as in other cases, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.
>
> (June 25, 1948, ch. 646, 62 Stat. 954; May 24, 1949, ch. 139, §98, 63 Stat. 104; Oct. 31, 1951, ch. 655, §51(b), (c), 65 Stat. 727; Sept. 21, 1959, Pub. L. 86–320, 73 Stat. 590; Oct. 10, 1979, Pub. L.

> (C) by striking "makes affidavit" and inserting "submits an affidavit that includes a statement of all assets such prisoner possesses";
> (D) by striking "such costs" and inserting "such fees";
> (E) by striking "he" each place it appears and inserting "the person" ...

[22] https://docs.uscode.justia.com/1995/title28/USCODE-1995-title28/pdf/USCODE-1995-title28-partV-chap123-sec1915.pdf

96–82, §6, 93 Stat. 645.)

The pre-PLRA statute is absolutely clear that the *only* requirements for IFP filing are that the litigant "makes affidavit that [they are] unable to pay such costs or give security therefor", and "state the nature of the action, defense or appeal and affiant's belief that [they are] entitled to redress."

There is not a single mention of any requirement for detailed financial substantiation. Indeed, doing so would go against the essential admissibility of sworn testimony. The sworn affidavit is admissible by itself, and as the *only* thing demanded by the law, it needs no further substantiation.

The purpose of a court demanding further details of an IFP applicant's finances is, in effect, to attempt to impeach the affiant.[23] A court can only do so if there is good cause to believe that the affiant has committed perjury, and even then, likely only if criminal charges are brought; a court may not act as prosecutor. It is entirely improper to, in effect, accuse *every* affiant of perjury and demand that they *prove* what they have sworn to be true, with no statutory basis for such demand.

If a court wishes to impose a standard for what does or does not count as poor, rather than leaving that up to each applicant, then it has a clearly prescribed means for doing so: the Rules Enabling Act. The judiciary can, and should, promulgate clear, specific rules that permit an applicant to determine for themselves whether or not they meet the criteria. It may not impose such criteria in secret, nor on a purely *ad hoc* basis; and it may not demand information that the IFP statute does not permit in order to substitute its own standardless decisions for what the statute explicitly dictates: namely, nothing but the non-prisoner applicant's good-faith, sworn statement.

Both the plain text of the current code, and of the linchpin PLRA amendments, indicate that *only* prisoners need to provide "a statement of all assets such prisoner possesses". Non-prisoners have no duty to provide *any* such statement at all[24], short of a perjury inquiry based on good cause.

4. *AOUSC's non-prisoner IFP forms and practices are* ultra vires*, and cannot withstand scrutiny.*

Courts must give effect to *all* words of a statute: here, "such prisoner" in (1)(a). They must do so under strict scrutiny, since this is a law that discriminates on the basis of poverty. Any additional inquiry into marriage must also survive strict scrutiny, and is utterly without statutory basis.

The statute does not permit what AOUSC-instructed courts are now doing. It is atextual, contrary to the clear language and intent of Congress, and a violation of fundamental Constitutional rights, such as the rights to privacy, marriage, and due process.

By promulgating the non-prisoner IFP rules & forms without a statutory basis for the demands made therein, the AOUSC violated the Rules Enabling Act and the Constitution.

AOUSC cannot in good faith defend them under any principled textual analysis of 28 U.S.C. § 1915, and should promptly admit and correct its error.

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[23] Or to determine a target for garnishment. This is the clear purpose of *prisoner* disclosure; *see* (b)(1, 2) & (f)(2).

[24] Let alone non-"assets", like income, expenses, employment history, or debts. And certainly not those of third parties.

Settlement demand

I am under actual, current and imminent threat of harm from the courts' current practices; namely, if I marry my fiancé, I am likely to face the severe sanction of "dismissal at any time", or simply be unable to access the courts in the first place (as has in fact happened before).[25]

This harm is the direct fault of the AOUSC, which promulgated AO 239 and FRAP Form 4 *ultra vires*. These are followed (with minor variation) by all Federal civil courts as *de facto* rules.

This harm directly interferes with, and is currently preventing, my intended marriage to my partner of 14 years, and with our private contracts. It is imposing an unconstitutional condition: that I give up one right (access to the courts) in order to assert another (marriage and freedom to contract).

I wish to marry promptly, without risk to my IFP status. AOUSC rules prevent me from doing so.

This harm can be readily remedied by the AOUSC, as follows:

1. Amend AO 239 and FRAP Form 4 to completely strike *all* questions about spouses.[26]
2. Issue explicit guidance to all Federal courts, stating that it is prohibited to make any inquiry as to an IFP applicant's spouse solely because the applicant filed for IFP status.
3. Do both of the above as quickly as is permitted by the Rules Enabling Act.

That is, therefore, precisely what I demand in order to avoid litigation.

As with any settlement discussion, your active cooperation is essential. If I do not hear back from you promptly (and regularly thereafter, to inform me of progress towards completion), I will be forced to assume that you are refusing to settle this amicably or to substantively engage in non-litigation settlement, and therefore forced to sue for declaratory and injunctive relief.

If you have any concerns, alterations to propose, practical barriers that might affect your ability to complete this in a timely manner, or indeed anything else that would affect a speedy and amicable resolution, I am very amenable to discussing and resolving them in a reasonable manner.

Please promptly tell me your point of contact for all further discussion of this matter by having your litigation counsel email me.

I hope that we can resolve this promptly, amicably, and without the need for litigation.

Respectfully,
Sai[27]
[redacted] / +1 [redacted]

[25] *See e.g. In re Sai*, No. 1:18-mc-161 (D. D.C.), No. 19-5039 (D.C. Cir.) (dismissed solely for reasons related to IFP affidavit privacy, directly contrary to prior order of D. D.C. granting seal of IFP affidavit and IFP status, 1:14-cv-403).

[26] Although I believe it is also *ultra vires* for the reasons expressed above, I do not here demand the removal of spouse-related questions about the *applicant's* finances, such as alimony; nor questions as to assets that are jointly owned, if they are actually available to the applicant. Joint ownership includes e.g. assets of an LLP, not just of marriage.

[27] Sai is my full legal name; I am mononymous. I am agender; please use gender-neutral pronouns and no title. My partner is male. I am partially blind. Please send all communications, in § 508 accessible format, by email.