

U.S. DISTRICT COURT
U.S. District Court, Western District of New York (Buffalo)
CIVIL DOCKET FOR CASE #: 1:19-cv-00417-RJA-LGF

Pickering v. U.S. Department of Justice et al
Assigned to: Hon. Richard J. Arcara
Referred to: Hon. Leslie G. Foschio
Related Cases: [1:14-cv-00330-RJA-LGF](#)
[1:19-cv-00001-LGF](#)
[1:19-cv-00319-LGF](#)

Date Filed: 03/31/2019
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: U.S. Government Defendant

Cause: 05:552 Freedom of Information Act

Plaintiff

Leslie James Pickering

represented by **Michael Kuzma**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

U.S. Department of Justice

represented by **Michael S. Cerrone**
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Buffalo, NY 14202
716-843-5851
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Defendant

U.S. Department of Homeland Security

represented by **Michael S. Cerrone**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/31/2019	<u>1</u>	COMPLAINT against All Defendants \$ 400 receipt number 0209-3405676, filed by Leslie James Pickering. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons)(Kuzma, Michael) (Entered: 03/31/2019)
04/01/2019		Case assigned to Hon. Richard J. Arcara. Notification to Chambers of on-line civil case opening. (SG) (Entered: 04/01/2019)
04/01/2019		Notice of Availability of Magistrate Judge: A United States Magistrate of this Court is available to conduct all proceedings in this civil action in accordance with 28 U.S.C. 636c and FRCP 73. The Notice, Consent, and Reference of a Civil Action to a Magistrate Judge form (AO-85) is available for download at http://www.uscourts.gov/services-forms/forms . (SG) (Entered: 04/01/2019)
04/01/2019		AUTOMATIC REFERRAL to Mediation The ADR Plan is available for download at http://www.nywd.uscourts.gov/alternative-dispute-resolution (SG) (Entered: 04/01/2019)

04/01/2019	<u>2</u>	Summons Issued as to U.S. Department of Homeland Security, U.S. Department of Justice (Attachments: # <u>1</u> summons issued) (SG) (Entered: 04/01/2019)
04/19/2019	<u>3</u>	AFFIDAVIT of Service for Summons and Complaint served on Mark Witzleben, United States Attorney's Office, on April 12, 2019, filed by Leslie James Pickering. (Kuzma, Michael) (Entered: 04/19/2019)
04/19/2019	<u>4</u>	AFFIDAVIT of Service for Summons and Complaint served on U. S. Department of Homeland Security on April 12, 2019, filed by Leslie James Pickering. (Kuzma, Michael) (Entered: 04/19/2019)
07/04/2019	<u>5</u>	AFFIDAVIT of Service for Summons and Complaint <i>on U. S. Department of Justice</i> served on Mark Witzleben, United States Attorney's Office, on June 18, 2019, filed by Leslie James Pickering. (Kuzma, Michael) (Entered: 07/04/2019)
07/25/2019	<u>6</u>	AFFIDAVIT of Service for Summons and Complaint <i>on U. S. Department of Justice</i> on July 23, 2019, filed by Leslie James Pickering. (Kuzma, Michael) (Entered: 07/25/2019)
08/15/2019	<u>7</u>	ANSWER to <u>1</u> Complaint by U.S. Department of Justice, U.S. Department of Homeland Security.(Cerrone, Michael) Modified on 8/16/2019 to add filer (SG). (Entered: 08/15/2019)
08/16/2019		E-Filing Notification: <u>7</u> ANSWER to <u>1</u> Complaint Modified on 8/16/2019 to add filer U.S. Department of Homeland Security (SG). (SG) (Entered: 08/16/2019)
08/16/2019		ADR Plan electronically forwarded to attorneys. The ADR Plan is available for download at http://www.nywd.uscourts.gov/alternative-dispute-resolution .(SG) (Entered: 08/16/2019)
08/19/2019	<u>8</u>	TEXT ORDER REFERRING CASE to Magistrate Judge Hon. Leslie G. Foschio. The Magistrate Judge is hereby designated to act in this case as follows: Pursuant to 28 U.S.C. Section 636(b)(1)(A) and (B), all pre-trial matters in this case are referred to the above-named United States Magistrate Judge, including but not limited to: (1) conduct of a scheduling conference and entry of a scheduling order pursuant to Fed. R. Civ. P. 16, (2) hearing and disposition of all non-dispositive motions or applications, (3) supervision of discovery, and (4) supervision of all procedural matters involving the aforementioned or involving the preparation of the case or any matter therein for consideration by the District Judge. The Magistrate Judge shall also hear and report upon dispositive motions for the consideration of the District Judge pursuant to 28 U.S.C. Section 636(b)(1)(B) and (C). All motions or applications shall be filed with the Clerk and made returnable before the Magistrate Judge. The parties are encouraged to consider the provisions of 28 U.S.C. Section 636(c) governing consent to either partial or complete disposition of the case, including trial if necessary, by the Magistrate Judge. Consent forms are available from the office of the Magistrate Judge or the office of the Clerk of Court. IT IS SO ORDERED. Issued by Hon. Richard J. Arcara on 8/19/2019. (LAS) (Entered: 08/19/2019)
08/27/2019	<u>9</u>	ORDER. Scheduling Conference set for 10/1/2019 11:30 AM before Hon. Leslie G. Foschio. Signed by Hon. Leslie G. Foschio on 8/27/2019. (SDW) (Entered: 08/28/2019)
10/01/2019	<u>10</u>	Minute Entry for proceedings held before Hon. Leslie G. Foschio: Scheduling Conference held on 10/1/2019. Case management order discussed, same to be filed by the court. Appearances: Michael Kuzma, Esq. w/ Plaintiff / Dft: AUSA Michael Cerrone (Court Reporter FTR Gold.) (SDW) (Entered: 10/01/2019)
10/01/2019	<u>11</u>	SCHEDULING ORDER (Please Note: This docket text may <u>not</u> contain the entire contents of the attached Order. It is your responsibility to read the attached Order and download it for future reference. Direct any questions to the Chambers of the Judge who entered this Order.) Motions to Join Parties/Amend Pleadings due by 10/31/2019. Dispositive Motions due by 4/30/2020. Signed by Hon. Leslie G. Foschio on 10/1/2019. (SDW) (Entered: 10/02/2019)
03/23/2020	<u>12</u>	MOTION for Extension of Time to File <i>Extending the Deadlines Contained in the Scheduling Order</i> by U.S. Department of Homeland Security, U.S. Department of Justice. (Attachments: # <u>1</u> Declaration with Ex. A)(Cerrone, Michael) (Entered: 03/23/2020)

03/25/2020	<u>13</u>	TEXT ORDER granting <u>12</u> Motion for Extension of Time to File. First Amended Scheduling Order shall be filed separately. Issued by Hon. Leslie G. Foschio on 3/25/2020. (SDW) (Entered: 03/25/2020)
03/25/2020	<u>14</u>	FIRST AMENDED SCHEDULING ORDER (Please Note: This docket text may not contain the entire contents of the attached Order. It is your responsibility to read the attached Order and download it for future reference. Direct any questions to the Chambers of the Judge who entered this Order.) Defendants shall file its Vaughn filing on or before 6/29/2020. Dispositive Motions due by 6/29/2020. Signed by Hon. Leslie G. Foschio on 3/25/2020. (SDW) (Entered: 03/25/2020)
05/15/2020	<u>15</u>	MOTION for Extension of Time to File <i>Dispositive Motions</i> by U.S. Department of Homeland Security, U.S. Department of Justice.(Cerrone, Michael) (Entered: 05/15/2020)
05/15/2020	<u>16</u>	DECLARATION signed by Michael S. Cerrone re <u>15</u> MOTION for Extension of Time to File <i>Dispositive Motions</i> filed by U.S. Department of Homeland Security, U.S. Department of Justice . (Attachments: # <u>1</u> Attachment)(Cerrone, Michael) (Entered: 05/15/2020)
05/18/2020	<u>17</u>	TEXT ORDER granting <u>15</u> Motion for Extension of Time to File. Second Amended Scheduling Order shall be filed separately. Issued by Hon. Leslie G. Foschio on 5/18/2020. (SDW) (Entered: 05/18/2020)
05/18/2020	<u>18</u>	SECOND AMENDED SCHEDULING ORDER (Please Note: This docket text may not contain the entire contents of the attached Order. It is your responsibility to read the attached Order and download it for future reference. Direct any questions to the Chambers of the Judge who entered this Order.) Defendants shall file its Vaughn filing, whether in declaration format or otherwise, on or before 9/30/2020. Dispositive Motions due by 9/30/2020. Signed by Hon. Leslie G. Foschio on 5/18/2020. (SDW) (Entered: 05/18/2020)
05/28/2020	<u>19</u>	AFFIDAVIT of <i>Michael Kuzma</i> by Leslie James Pickering. (Kuzma, Michael) (Entered: 05/28/2020)
09/25/2020	<u>20</u>	Third MOTION for Extension of Time to File <i>Dispositive Motions and Vaughn indices</i> by U.S. Department of Homeland Security, U.S. Department of Justice. (Attachments: # <u>1</u> Declaration Michael S. Cerrone)(Cerrone, Michael) (Entered: 09/25/2020)
09/25/2020	<u>21</u>	TEXT ORDER granting <u>20</u> Motion for Extension of Time to File. Third Amended Scheduling Order to be filed separately. Issued by Hon. Leslie G. Foschio on 9/25/2020. (SDW) (Entered: 09/25/2020)
09/25/2020	<u>22</u>	THIRD AMENDED SCHEDULING/ ORDER (Please Note: This docket text may not contain the entire contents of the attached Order. It is your responsibility to read the attached Order and download it for future reference. Direct any questions to the Chambers of the Judge who entered this Order.) Defendants shall file its Vaughn filing, whether in declaration format or otherwise, on or before 11/30/2020. Dispositive Motions due by 11/30/2020. Signed by Hon. Leslie G. Foschio on 9/25/2020. (SDW) (Entered: 09/25/2020)
11/30/2020	<u>23</u>	MOTION for Summary Judgment by U.S. Department of Homeland Security, U.S. Department of Justice.(Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>24</u>	MEMORANDUM IN SUPPORT re <u>23</u> MOTION for Summary Judgment by U.S. Department of Homeland Security, U.S. Department of Justice. (Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>25</u>	STATEMENT OF FACTS (<i>Statement of Undisputed Facts</i>) by U.S. Department of Homeland Security, U.S. Department of Justice. (Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>26</u>	DECLARATION signed by Catrina M. Pavlik-Keenan re <u>23</u> MOTION for Summary Judgment filed by U.S. Department of Homeland Security, U.S. Department of Justice . (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F-1, # <u>7</u> Exhibit F-2, # <u>8</u> Exhibit G)(Cerrone, Michael) (Entered: 11/30/2020)

11/30/2020	<u>27</u>	MOTION for Summary Judgment by U.S. Department of Homeland Security, U.S. Department of Justice.(Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>28</u>	MEMORANDUM IN SUPPORT re <u>27</u> MOTION for Summary Judgment by U.S. Department of Homeland Security, U.S. Department of Justice. (Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>29</u>	STATEMENT OF FACTS (<i>Statement of Undisputed Facts</i>) by U.S. Department of Homeland Security, U.S. Department of Justice. (Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>30</u>	DECLARATION signed by Adam C. Siple re <u>27</u> MOTION for Summary Judgment filed by U.S. Department of Homeland Security, U.S. Department of Justice . (Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>31</u>	MOTION for Summary Judgment by U.S. Department of Homeland Security, U.S. Department of Justice.(Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>32</u>	MEMORANDUM IN SUPPORT re <u>31</u> MOTION for Summary Judgment by U.S. Department of Homeland Security, U.S. Department of Justice. (Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>33</u>	STATEMENT OF FACTS (<i>Statement of Undisputed Facts</i>) by U.S. Department of Homeland Security, U.S. Department of Justice. (Cerrone, Michael) (Entered: 11/30/2020)
11/30/2020	<u>34</u>	DECLARATION signed by Michael G. Seidel re <u>31</u> MOTION for Summary Judgment filed by U.S. Department of Homeland Security, U.S. Department of Justice . (Attachments: # <u>1</u> Exhibit A–H)(Cerrone, Michael) (Entered: 11/30/2020)
12/01/2020		E–Filing Notification: RE: MOTIONS – for future reference, please file the Motion with Memorandum, Declaration, Statement of Facts etc. as attachments for one docket entry. (BK) (Entered: 12/01/2020)
12/01/2020	<u>35</u>	TEXT ORDER re <u>23</u> MOTION for Summary Judgment filed by U.S. Department of Homeland Security, U.S. Department of Justice, <u>27</u> MOTION for Summary Judgment filed by U.S. Department of Homeland Security, U.S. Department of Justice, <u>31</u> MOTION for Summary Judgment filed by U.S. Department of Homeland Security, U.S. Department of Justice. Responses due by 1/8/2021. Replies due by 1/22/2021. Oral argument at the discretion of the court. Issued by Hon. Leslie G. Foschio on 12/1/2020. (SDW) (Entered: 12/01/2020)
12/30/2020	<u>36</u>	CONTINUATION OF EXHIBITS to <u>34</u> Declaration <i>Redacted Exhibits</i> . (Cerrone, Michael) (Entered: 12/30/2020)
01/08/2021	<u>37</u>	MEMORANDUM in Opposition re <u>23</u> MOTION for Summary Judgment , <u>31</u> MOTION for Summary Judgment , <u>27</u> MOTION for Summary Judgment filed by Leslie James Pickering. (Attachments: # <u>1</u> Affidavit Michael Kuzma, # <u>2</u> Statement of Undisputed Facts)(Kuzma, Michael) (Entered: 01/08/2021)
01/13/2021	<u>38</u>	MOTION for Extension of Time to File Response/Reply as to 35 Text Order,,, Set Deadlines,, (<i>Motion for Extension to file reply papers in further support of Defendants' summary judgment motions</i>) by U.S. Department of Homeland Security, U.S. Department of Justice. (Attachments: # <u>1</u> Declaration of Michael S. Cerrone)(Cerrone, Michael) (Entered: 01/13/2021)
01/13/2021	<u>39</u>	TEXT ORDER granting <u>38</u> Motion for Extension of Time to File Response/Reply re <u>31</u> MOTION for Summary Judgment. Replies due by 3/5/2021. Issued by Hon. Leslie G. Foschio on 11/13/2021. (SDW) (Entered: 01/13/2021)
03/05/2021	<u>40</u>	MEMORANDUM in Support re <u>23</u> MOTION for Summary Judgment , <u>31</u> MOTION for Summary Judgment , <u>27</u> MOTION for Summary Judgment filed by U.S. Department of Homeland Security, U.S. Department of Justice. (Cerrone, Michael) (Entered: 03/05/2021)
03/05/2021	<u>41</u>	DECLARATION signed by Michael G. Seidel re <u>40</u> Memorandum in Support of Motion, filed by U.S. Department of Homeland Security, U.S. Department of Justice .

		(Cerrone, Michael) (Entered: 03/05/2021)
11/22/2021	<u>42</u>	REPORT AND RECOMMENDATIONS re <u>23</u> MOTION for Summary Judgment filed by U.S. Department of Homeland Security, U.S. Department of Justice, should be GRANTED; <u>31</u> MOTION for Summary Judgment filed by Federal Bureau of Investigation, U.S. Department of Justice, should be GRANTED; <u>27</u> MOTION for Summary Judgment filed by Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, should be GRANTED. The Clerk of Court should be directed to close the file. Objections due fourteen days from receipt. Signed by Hon. Leslie G. Foschio on 11/22/2021. (TAH) (Entered: 11/22/2021)
12/06/2021	<u>43</u>	OBJECTION to <u>42</u> Report and Recommendations by Leslie James Pickering. (Kuzma, Michael) (Entered: 12/06/2021)
12/07/2021	44	TEXT ORDER: Plaintiff has filed <u>43</u> objections to Magistrate Judge Leslie G. Foschio's <u>42</u> Report and Recommendation. Response papers are due on 1/4/2022. Reply papers will be due on 1/25/2022. Oral argument will be scheduled at the discretion of the Court. Issued by Hon. Richard J. Arcara on 12/7/2021. (LAS) (Entered: 12/07/2021)
12/14/2021	<u>45</u>	MEMORANDUM/BRIEF <i>in further support of defendants' motions for summary judgment, pursuant to Fed. R. Civ. P. 56, and in opposition to Plaintiffs Objection to the Report and Recommendation</i> by U.S. Department of Homeland Security, U.S. Department of Justice. (Cerrone, Michael) (Entered: 12/14/2021)
01/04/2022	<u>46</u>	REPLY/RESPONSE to re <u>45</u> Memorandum/Brief, filed by Leslie James Pickering. (Kuzma, Michael) (Entered: 01/04/2022)
03/23/2023	<u>47</u>	DECISION AND ORDER. Magistrate Judge Leslie G. Foschio's <u>42</u> Report and Recommendation is adopted in part. Defendant Department of Justice's motions for summary judgment <u>27</u> <u>31</u> are granted. Defendant Department of Homeland Security's motion for summary judgment <u>23</u> is denied. This matter is recommitted to Magistrate Judge Foschio for further proceedings as indicated in the Decision and Order. SO ORDERED. Signed by Hon. Richard J. Arcara on 3/23/2023. (LAS) (Entered: 03/23/2023)
09/17/2024	48	TEXT ORDER: The court's Decision and Order filed March 23, 2023 <u>47</u> , denied Defendant DHS's motion for summary judgment (Dkt. 23), noting that Plaintiff had substantially prevailed against DHS who did not oppose Plaintiff's request for attorney fees, and remanded the matter to the undersigned for further proceedings including making specific findings as to the appropriate amount of such attorney fees. Accordingly, Plaintiff shall file an affidavit, supported by exhibits, for such attorney fees by October 2, 2024. Defendant DHS's response to Plaintiff's affidavit shall be filed by October 9, 2024. SO ORDERED. Entered by Hon. Leslie G. Foschio on 9/17/2024. (TAH) (Entered: 09/17/2024)