No. 22-539

IN THE

Supreme Court of the United States

JULIET ANILAO, ET AL.,

Petitioners,

—v.—

THOMAS J. SPOTA, III, INDIVIDUALLY AND AS DISTRICT ATTORNEY OF SUFFOLK COUNTY, NEW YORK, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Prosecutors are absolutely immune from suit for money damages pursuant to 42 U.S.C. § 1983 for conduct related to the judicial phase of the criminal process, including presentation of a case to the grand jury and initiating a prosecution. Absolute immunity protects prosecutors from liability for acts undertaken in excess of jurisdiction, as long as the prosecutor has not acted in the clear absence of all jurisdiction.

In this case, Petitioners, ten nurses who resigned en masse from a skilled nursing facility caring for critically ill pediatric patients ("Nurse Petitioners") and their attorney, Felix Q. Vinluan, who advised them regarding the mass resignation, were charged by a grand jury with various felonies, including endangering the welfare of a child, endangering the welfare of a physically disabled person, conspiracy, and criminal solicitation. Respondent Leonard Lato,[1] an Assistant District Attorney ("ADA") employed by Respondent Office of the District Attorney of Suffolk County, New York, which was headed by the Suffolk County District Attorney ("DA"), Respondent Thomas J. Spota, III, presented the case to the grand jury and initiated the prosecution of Petitioners in the Supreme Court for Suffolk County. The New York Supreme Court, Criminal Term, for Suffolk County, the Honorable

[1] Leonard Lato is deceased (Pet.'s Appx. 38a n.2) and is represented in this Petition by Karla Lato, Administrator of his Estate.

Robert W. Doyle presiding, denied Petitioners' motions to dismiss the indictments, rejecting arguments that prosecution would violate the Thirteenth Amendment rights of the Nurse Petitioners and the First Amendment rights of Petitioner Vinluan. However, the New York Supreme Court, Appellate Division, Second Department, granted Petitioner's application for special relief under N.Y. CPLR Article 78, issuing a writ of prohibition ordering that the prosecution not go forward. The Court found that based on the record presented[2], it would be in excess of the prosecutor's jurisdiction to go forward with the prosecution. Petitioners then commenced a civil action for damages pursuant to 42 U.S.C. § 1983. The Second Circuit Court of Appeals affirmed the judgment of the District Court, the Honorable Joseph F. Bianco presiding, holding that Petitioners' claims that Respondents violated their First and Thirteenth Amendment rights in presenting the matter to the grand jury and in initiating the prosecution were barred by absolute prosecutorial immunity because Respondents did not act in clear absence of jurisdiction.

The questions presented are:

1. Whether a plaintiff can defeat a prosecutor's absolute immunity from suit under 42 U.S.C. § 1983 by showing only that the prosecutor

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[2] Although the Supreme Court, Criminal Term, was asked to and did review the grand jury minutes in ruling on the motions to dismiss the indictments (Resp. Spota's Appx.2a and 8a), the Appellate Division did not review the grand jury minutes before issuing the writ of prohibition.

acted in excess of jurisdiction, but not without jurisdiction.

2. Whether the Court should reconsider the doctrine of absolute prosecutorial immunity to prohibit application of such immunity when the plaintiff shows that the prosecutor acted in excess of jurisdiction, even though the prosecutor did not act in the absence of all jurisdiction.

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INTRODUCTION

Respondent Thomas J. Spota, III, was the District Attorney of Suffolk County, New York in the spring of 2006 when representatives of Sentosa, a privately-owned nursing-home-operator, came to him complaining about the mass resignation of recently employed nurses. These nurses, who had been recruited from the Philippines, had been assigned at the facility to care for critically ill pediatric patients. Although no patients suffered harm as a result of the mass resignation, Sentosa expressed concern about the legality of what it saw as patient abandonment, coming as it did on the Friday immediately preceding both Palm Sunday, which begins Holy Week leading up to Easter the following Sunday, and the first night of Passover on Monday, April 10, 2006, when replacements would be hard to find. (Pet.'s Appx. 77a-79a, 82a-83a, 86a.) DA Spota assigned this matter to ADA Leonard Lato, who, only after a six-month investigation presented the matter to a grand jury, which itself took place over the course of five weeks. On March 6, 2007, a true bill of indictment was voted against both the Nurse Petitioners and Petitioner Vinluan, the attorney who advised the nurses concerning their decisions to resign. (Pet.'s Appx. 85a-86a, 88a, 90a.)

Although the grand jury returned indictments against Petitioners and the trial court denied their motions to dismiss the indictments (Pet.'s Appx. 7a-8a; Resp. Spota's Appx. 1a-12a), Petitioners ultimately were not prosecuted for the charges in the indictments because the New York Appellate Division, Second Department, granted Petitioners'

petition for a writ of prohibition, finding that the prosecution would violate the Thirteenth Amendment rights of the Nurse Petitioners and the First Amendment rights of Petitioner Vinluan. Significantly, the Second Department did *not* hold—as Petitioners erroneously insist throughout their Petition—that Respondents acted without jurisdiction. Rather, the appellate court found that Respondents had acted in excess of their authority by prosecuting Petitioners. (Pet.'s Appx. 256a.) This is demonstrated by the fact that the appellate court stated that it was exercising its discretion in issuing the writ of prohibition. (Pet.'s Appx. 257a, 267a.) Had Respondents acted in the complete absence of authority, as Petitioners contend, prohibition would have been mandatory.

Following dismissal of the state court criminal charges, Petitioners brought suit in the U.S. District Court for the Eastern District of New York under 42 U.S.C. § 1983 against both the *private* Sentosa defendants who initiated the investigation and attempted prosecution of Petitioners and the *public* defendants—Respondents herein—who engaged in the investigation and attempted prosecutions. In evaluating Petitioners' claim, District Court Judge Bianco meticulously separated out the alleged prosecutorial functions performed by DA Spota and ADA Lato from the alleged investigative functions performed by them. After extensive briefing by both Petitioners and the public defendants, Judge Bianco granted Respondents' motion to dismiss the claims based on prosecutorial functions on the ground of absolute prosecutorial immunity on March 31, 2011. (Pet.'s Appx. 3a-4a, 137a-244a.) Over seven years

later, after extensive discovery, on November 28, 2018, Judge Bianco granted the public defendants' motion for summary judgment on qualified immunity grounds because Petitioners did not point to sufficient evidence to raise a genuine issue of material fact on the remaining claims. (Pet.'s Appx. 61a-136a.) A year later, on October 25, 2019, Petitioners settled with the Sentosa defendants for money damages. (Resp. Spota's Appx. 13a-17a.)

In a thorough, but not precedent-challenging decision, the Second Circuit Court of Appeals affirmed both Judge Bianco's prosecutorial immunity and qualified immunity decisions. The court did *not* hold, as Petitioners contend, that absolute immunity attaches as long as the prosecutor points to some criminal statute, irrespective of any legal or factual basis. (Pet. for Cert. 1.) Rather, applying well-established law, the court stated that in determining whether "a clear and obvious" impediment to the prosecutor's jurisdiction exists—which would remove the protection of absolute immunity—the court may inquire into whether any criminal statute would have authorized the prosecution. (Pet.'s Appx. 14a.) In this case, Respondents could have prosecuted the Nurse Petitioners for violating child endangerment laws without violating the Thirteenth Amendment, and they could have prosecuted Petitioner Vinluan for advising a client to commit a crime. Accordingly, there was no clear and obvious jurisdictional defect to the prosecution. (Pet.'s Appx. 23a-26a.)

Nothing about the routine, but carefully articulated, application of the doctrine of prosecutorial immunity in this case cries out for a

change in the law. The Second Circuit's opinion is in complete accord with both this Court's decisions and common law. Moreover, although Petitioners were not able to recover damages for Respondents' decision to prosecute them, they did obtain equitable relief from the New York appellate court, which halted the prosecution, as well as money damages from the Sentosa defendants who initiated the investigation into Petitioners' coordinated mass resignation. Accordingly, this is *not* a case about a harm without a remedy. Nor is this case about human trafficking by the private party or racial discrimination.

COUNTERSTATEMENT OF THE CASE

For the most part, Petitioners' recitation of the case is accurate. However, a few points must be clarified:

1. Throughout the Petition, Petitioners describe Sentosa as a politically connected, abusive employer and even go so far as to insinuate that the company is engaged in human trafficking, citing *Paguirigan v. Prompt Nursing Empl. Agency LLC*, No. 17-cv-1302, 2019 U.S. Dist. LEXIS 165587, *44-60, 2019 WL 4647648, *18-20 (E.D.N.Y. Sept. 23, 2019) (holding that the Sentosa defendants violated the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. §§ 1589 et seq., with regard to a separate group of nurses recruited from the Philippines). First, while Petitioners continue to allege that Sentosa has acquired political influence by contributing to various politicians (Pet.'s Appx. 150a), they have never produced evidence that

Sentosa contributed to the campaign of Respondent Spota. Second, the record does not support an inference that Respondents were aware of Sentosa's employment practices at the time Sentosa approached them or at any time thereafter during the pendency of the investigation into Petitioners' mass resignation in 2006. Third, the reference to the decision in *Paguirigan* is merely intended to inflame the Court and has no relevance to this Petition. There is no evidence in the record, and Petitioners do not argue, that any of the Nurse Petitioners in this matter were members of the plaintiff class in *Paguirigan*. Suit in *Paguirigan* was filed in 2017—seven years after Petitioners commenced their § 1983 action in this case and six years after the District Court applied absolute prosecutorial immunity—and the *Paguirigan* decision was decided in 2019—eight years after District Court Judge Bianco granted Respondents' motion to dismiss on the ground of prosecutorial immunity and one year after summary judgment was granted resolving the remaining claims against Respondents in their favor. Most importantly, *Paguirigan* was a suit against the Sentosa defendants, not Respondents in this matter.

Judge Chin's reference to *Paguirigan* in his dissent to the Second Circuit decision in the instant matter bolstered his position that *Sentosa* acted with racial animus (Pet.'s Appx. 57a-58a), but as the majority correctly pointed out, "the immediate issue before us involves the conduct and immunity of the prosecutors, not Sentosa." (Pet.'s Appx. 30a.) Moreover, Petitioners never argued that Respondents acted with racial animus, "not in the complaint, not on summary judgment, not even on

appeal." (Pet.'s Appx. 31a.) So, to the extent that Petitioners seek to carve out a new rule for prosecutorial immunity where the prosecutor is motivated by race, this case does not provide a springboard. Conflating Sentosa's allegedly racially motivated actions with those of the prosecutor Respondents does not change the fact that Petitioners never alleged in the courts below that the prosecutors acted with racial animus or engaged in or otherwise supported human trafficking. To the extent they had such claims against Sentosa, those matters were resolved in a settlement with Sentosa for money damages. (Resp. Spota's Appx. 13a-17a.)

2. Petitioners' insistence that Respondents Spota and Lato agreed to look into Sentosa's complaints about the resignation of Nurse Petitioners, even though the Suffolk County Police Department had investigated Sentosa's complaint to the police and found nothing wrong (Pet. for Cert. i, 6-7), is not supported by the record and only serves unfairly to put Respondents in a bad light by suggesting that the prosecutors launched a criminal investigation after the police had concluded there was no basis to take action. Reliance on Judge Chin's statement, in his dissent to the Second Circuit opinion, that the police "declined to take action after investigating the matter" (Pet.'s Appx. 37a) is misplaced. While Petitioners made this allegation in their Amended Complaint (Pet.'s Appx. 139a), by the time they got to the summary judgment stage, they contended only that the police took no action in response to Sentosa's complaint, a position shared by Respondents and adopted by the majority opinion below. (Pet.'s Appx. 6a, 82a n.20.)

3. Petitioners repeatedly assert—erroneously—that the New York Appellate Division, Second Department, issued a writ of prohibition discontinuing Petitioners' prosecution in the state court because "the prosecution was 'without or in excess of jurisdiction,' [Pet's Appx] at 255a." *See* Pet. for Cert. at 8. In fact, the Appellate Division ruled that "[i]f the prosecution impermissibly infringes upon [the First and Thirteenth Amendments], the act of prosecuting the petitioners would be *an excess in power.*" (Pet.'s Appx. 256a) (emphasis added). The appellate court then went on to determine whether it should exercise its discretion to issue a writ of prohibition because "'even if prohibition lies and an act *in excess of power* is perceived, the remedy is not granted as of right but only in the sound discretion of the reviewing court' (*Matter of Holtzman v. Goldman*, 71 N.Y.2d 564, 569, 528 N.Y.S.2d 21, 523 N.E.2d 297)." (Pet's. Appx. 257a) (emphasis added). In his detailed analysis of the absolute immunity issue, Judge Bianco recognized that "the Appellate Division found only the prosecution of [Petitioners] 'would be an excess of power.' *Vinluan*, 873 N.Y.S.2d at 78." (Pet's Appx. 184a-185a.) The Second Circuit came to a similar conclusion on appeal. (Pet.'s Appx. 22a-23a.)

The oft-quoted language, "without or in excess of jurisdiction" actually comes from N.Y. C.P.L.R. 7803(2), the New York statute that allowed the Appellate Division to consider whether Respondents were acting "without *or* in excess of jurisdiction" (emphasis added). It is misleading to use this language to create the impression that the Second

Circuit upheld the application of absolute prosecutorial immunity in a case where prosecutors acted without jurisdiction. That is simply not the case.

4. Petitioners' assertion at page 9 of the Petition that "[a]fter several years, the remaining claims were either settled or resolved at summary judgment" is inaccurate with respect to Respondents. As the Second Circuit recognized, those claims against DA Spota and ADA Lato regarding "the non-investigative, prosecutorial phase of their case against the plaintiffs, including the selection of charges, the initiation of the prosecution, and the presentation of testimony and evidence to the grand jury" were dismissed on the ground of absolute immunity. (Pet.'s Appx. 10a.) After discovery, the District Court granted summary judgment on the remaining claims against the two prosecutors arising out of the investigative phase "because 'there [wa]s simply no evidence in the record that [Spota and Lato] engaged in any constitutional wrongdoing in the investigative stage of the case,' Anilao II, 340 F. Supp. 3d at 234." (Pet.'s Appx. 11a.) "The District Court then also dismissed the Monell claim against the County because there was no underlying constitutional violation. Anilao II, 340 F. Supp. 3d at 251." (*Id.*) In other words, all claims against Respondents were disposed of on pre-trial motions. The only claims that were settled were those against the Sentosa defendants, private parties who have no interest in absolute prosecutorial immunity. (Resp. Spota's Appx. 13a-17a.)

5. Petitioners misstate the holding of the Second Circuit. The court did *not* hold that absolute prosecutorial immunity applies whenever a relevant criminal statute would authorize prosecution for the charged conduct no matter how obvious it is that prosecution would violate the constitutional rights of the defendant. *See* Pet. for Cert. at 9. In fact, the court recognized that even if a statute authorizes prosecution, a prosecutor still may be held liable for money damages if the exercise of authority is intertwined with other unauthorized conduct, such as demanding a bribe, which was not alleged in this case. (Pet.'s Appx. 14a n. 5.) "Instead, 'absolute immunity must be denied' only where there is both the absence of all authority (because, for example, no statute authorizes the prosecutor's conduct) and the absence of any doubt that the challenged action falls well outside the scope of prosecutorial authority. Bernard v. County of Suffolk, 356 F.3d 495, 504 (2d Cir. 2004)." (Pet.'s Appx. 15a.) However, the court acknowledged that it is appropriate to look for an authorizing statute in determining whether the prosecutor is acting without jurisdiction (*id.*) and that in most cases prosecution is authorized by statute. (*Id.*)

While the majority acknowledged that Judge Chin, in his dissent, raised "compelling policy concerns . . . certainly as it relates to racially invidious prosecutions," the court pointed out that Petitioners had argued only that DA Spota and ADA Lato were "politically motivated" and had "not once mentioned that the [Respondents] were motivated by racial or national origin animus." (Pet.'s Appx. 31a n.13.) In failing to raise the issue of racial animus,

they waived it. (Pet.'s Appx. 30a-32a.) In any event, the court was bound by its "prior holding in Bernard [v. County of Suffolk, 356 F.3d 495 (2d Cir. 2004)] that 'racially invidious or partisan prosecutions, pursued without probable cause, are reprehensible, but such motives do not necessarily remove conduct from the protection of absolute immunity.' Bernard, 356 F.3d at 504." (Pet.'s Appx. 31a n.13.)

6. Judge Chin's dissent operates from a faulty premise, i.e., "the Second Department[] . . . [held] that the prosecutors were "proceeding . . . 'without or in excess of jurisdiction,' Vinluan, 873 N.Y.S.2d at 77 (quoting N.Y. C.P.L.R. § 7803(2)) -- holding that Spota and Lato had no colorable authority to indict the ten nurses for resigning to protest work conditions and their lawyer for filing a claim of discrimination on their behalf." (Pet.'s Appx. 46a.) As previously stated, the New York appellate court found that Respondents acted "in excess of jurisdiction," not without jurisdiction. Moreover, although he found a lot in the record to tease out arguments that DA Spota and ADA Lato acted with racial animus and/or that they acted without jurisdiction, Petitioners had seven years to make these arguments before the District Court finally granted summary judgment in favor of Respondents.

ARGUMENT

I. THE DECISION OF THE SECOND CIRCUIT COURT OF APPEALS DOES NOT CONFLICT WITH THIS COURT'S DECISIONS OR WITH THE DECISIONS OF OTHER CIRCUITS OR WITH COMMON LAW

Respondents generally agree with Petitioners' recitation of this Court's statements regarding absolute prosecutorial immunity as it has been developed from common law. Quite simply, "in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983." *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). However, Petitioners have not made the case that the doctrine is unwieldy or that it was misapplied in this instant matter.

1. Petitioners contend that the doctrine of prosecutorial immunity is so cumbersome that the Second Circuit in this case "adopte[ed] a shortcut" rather than make the "searching inquiry" into whether Respondents acted outside the scope of their lawful authority that is required under *Imbler*. (Pet. for Cert. 12.) Nothing could be further from the truth. District Court Judge Bianco wrote a decision on the motions to dismiss brought by Respondents and the Sentosa defendants that took up 57 pages in the Federal Supplement (Pet.'s Appx. 137a-244a), 14 of which were dedicated to a discussion of absolute immunity (Pet.'s Appx. 163a-193a) and five of those which analyzed whether the prosecutor Respondents acted in clear absence of all jurisdiction. (Pet.'s

Appx. 183a-193a.) Included in this analysis was a thoughtful review of the finding of the New York Appellate Division, Second Department, that the prosecutors merely acted in excess of jurisdiction, not without jurisdiction, in bringing the prosecutions in violation of the First and Thirteenth Amendments (Pet.'s Appx. 256a), as well as a recitation of federal decisions both in the Second Circuit and elsewhere holding that a prosecutor does not act without jurisdiction in initiating a prosecution in violation of a defendant's constitutional rights. Moreover, the District Court paid close attention to the functions allegedly performed by Respondents Spota and Lato and only applied absolute immunity to advocatory conduct (Pet.'s Appx. 168a-183a), allowing Petitioners time to pursue their challenges to the allegedly unlawful investigatory conduct. (Pet.'s Appx. 182a, 193a-200a.)

To the extent that the Second Circuit focused its discussion on appeal on whether Respondents had statutory authority to prosecute Petitioners, it was only because District Court Judge Bianco already had performed a painstaking analysis, which, as the appellate court, the Second Circuit was not required to replicate. In any event, the Court of Appeals did not create its own "lax statute-citing rule" (Pet. for Cert. 20), but simply applied well-established law holding that, as Petitioners have articulated it, "one way an official acts manifestly beyond his authority is 'if he fail[s] to observe obvious statutory or constitutional limitations on his powers.' *Butz* [*v. Economou*], 438 U.S. [478] at 494 [(1978)]." (Pet. for Cert. 12.) If there is no obvious bar to jurisdiction, then prosecutorial immunity applies, regardless of

the motive of the prosecutors or the existence of probable cause. (Pet.'s Appx. 21a.) Issuance of the writ of prohibition by the New York Appellate Division based on that court's assessment that prosecution would violate Petitioners' First and Thirteenth Amendment rights was not evidence of lack of jurisdiction. Rather, it merely demonstrated that the prosecution had exceeded its jurisdiction on the specific facts of the case. (Pet.'s Appx. 22a-23a.)

2. The fact that absolute prosecutorial immunity for adjudicatory functions did not exist at common law, by itself, is an insufficient basis for overruling *Imbler*. For starters, as Petitioners acknowledge, the modern prosecutor did not exist at common law. When Congress enacted 42 U.S.C. § 1983 in 1871, most prosecutions were brought by a victim's family and friends. (Pet. for Cert. 28.) Given the personal interest of the prosecutors of the time—who conceivably might prosecute only one case in their lifetime—it made perfect sense that immunity would not extend to malicious acts. However, the rise of the professional prosecutor, who is called upon to exercise discretion in prosecuting multiple cases in a year, called for the functional approach that this Court instituted in *Imbler* and which the courts below adhered to in this case. Knowing that they could be subject to suit for every exercise of discretion in deciding whether or not to prosecute would only discourage prosecutors from employing the professional judgment they have been trained to employ, which could mean that certain more complicated offenses would not be prosecuted

or, alternatively, that every offense, no matter how minor, would be prosecuted.[3]

As District Court Judge Bianco's decision showed, application of a functional approach does not entail "baroque line-drawing." (Pet. for Cert. 32.) While Judge Bianco showed great care in employing the functional approach—as should be expected—the results were straightforward, i.e., Respondents were absolutely immune for their actions in presenting the case to the grand jury and in initiating prosecution, but Petitioners were allowed to go forward with their claims that Respondents engaged in an unconstitutional investigation and fabricated

[3] As stated by this Court in *Imbler v. Pachtman*, 424 U.S. 409 (1976), just as with immunity from common law torts, absolute immunity from § 1983 suits was required to ensure "the fearless and vigorous performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system." *Id.* at 427-28. Petitioners' application for certiorari represents an unwarranted attempt to undermine the ability of prosecutors to carry out that critical duty. As this Court has rightly observed, "[b]ecause the daily function of a public prosecutor is to bring criminal charges, tort claims against public prosecutors 'could be expected with some frequency, for a defendant often will transform his resentment at being prosecuted into the ascription of improper and malicious actions to the State's advocate.' *Imble*r, 424 U.S., at 425, 96 S.Ct. 984. Such 'harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties,' and would result in a severe interference with the administration of an important public office. *Id.*, at 423, 96 S.Ct. 984. Constant vulnerability to vexatious litigation would give rise to the 'possibility that [the prosecutor] would shade his decisions instead of exercising the independence of judgment required by his public trust.' *Ibid.*" *Rehberg v. Paulk*, 566 U.S. 356, 365–66, 1504 (2012) (brackets in original).

evidence. Petitioners misstate the record in asserting that it took a decade of discovery and motion practice to distinguish between absolutely immune prosecutorial functions and investigatory functions. (Pet. for Cert. 32.) In fact, on March 23, 2010, shortly after Petitioners brought suit, Respondents moved to dismiss on absolute and qualified immunity grounds, and after extensive briefing and the filing of an Amended Complaint, on March 31, 2011, the District Court granted the motion to dismiss on absolute immunity grounds and denied the motion on qualified immunity grounds. (Pet.'s Appx. 65a, 156a-157a.) While another seven years passed before the District Court granted summary judgment to Respondents on qualified immunity grounds on November 28, 2018 (Pet.'s Appx. 61a-136a), that time lapse had nothing to do with confusion over application of the doctrine of absolute prosecutorial immunity. Rather, Petitioners took that time to try to develop—unsuccessfully, as it turns out—facts showing that Respondents engaged in an unconstitutional investigation for which qualified immunity did not apply. Allowing courts to oversee prosecutorial discretion, as Petitioners propose, would only prolong the determination of prosecutorial immunity, as indicated by the time it took for Petitioners to try to make their case on matters for which qualified immunity applied.

The doctrine of absolute prosecutorial immunity is far from perfect, in the way so many judicial doctrines are far from perfect, but it does give both plaintiffs and prosecutors a clear roadmap for seeking liability. As Justice Scalia once commented, "both *Imbler* and the 'functional'

approach are so deeply embedded in our § 1983 jurisprudence that, for reasons of stare decisis, I would not abandon them now." *Kalina v. Fletcher*, 522 U.S. 118, 135 (1997) (Scalia, J., concurring[4]).

II. THIS CASE IS A POOR VEHICLE FOR DECIDING WHETHER TO MODIFY OR ABOLISH THE DOCTRINE OF PROSECUTORIAL IMMUNITY

Even if this Court were inclined to revisit prosecutorial immunity, notwithstanding the lack of an identified split in the circuits or evidence that the Second Circuit diverged from this Court's prior decisions or common law, this case is not a platform for any change because Petitioners abandoned any argument that Respondents acted without jurisdiction before asserting that argument before this Court. Moreover, while Petitioners were precluded from recovering damages from the individual prosecutors in their § 1983 action, they did obtain monetary relief from the Sentosa defendants, and they were awarded equitable relief by the state court's issuance of a writ or prohibition.

1. Petitioners' whole argument centers on the premise that the Second Circuit affirmed the bar of absolute prosecutorial immunity even though Respondents acted without jurisdiction. That is simply not the case. As the Circuit Court observed in a footnote in its opinion:

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[4] Justice Scalia concurred in *Kalina v. Fletcher*, 522 U.S. 118 (1997), and did not dissent, as Petitioners erroneously state at page 26 of the Petition for Writ of Certiorari.

> Although a writ [of prohibition] may issue where an officer acts "without jurisdiction in a matter over which it has no power over the subject matter," Matter of State of New York, 36 N.Y.2d at 62, the plaintiffs do not contend on appeal that the Appellate Division, in issuing the writ, expressly found that the prosecutors acted "without jurisdiction." *We therefore conclude that they have abandoned the argument on appeal*. LoSacco v. City of Middletown, 71 F.3d 88, 92-93 (2d Cir. 1995). And in any event, we agree with the District Court that the Appellate Division found only that "the prosecution would be an excess in power." Vinluan, 873 N.Y.S.2d at 78; Anilao I, 774 F. Supp. 2d at 486.

(Pet.'s Appx. 23a n.11, 184a, 256a) (emphasis added).[5]

2. Even before Petitioners commenced this action pursuant to 42 U.S.C. § 1983, Petitioners

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[5] This Court should decline to review Petitioner's arguments attacking the Second Circuit's decision that were not raised in and not considered by the Second Circuit. *See, e.g.*, *Kennedy v. Plan Adm'r for Dupont Sav. and Inv. Plan*, 555 U.S. 285, 290 n.2 (2009) (Petitioner "did not raise this argument in the Court of Appeals, and we will not address it in the first instance."); *United States v. United Foods*, 533 U.S. 405, 417 (2001) (declining to review new substantive arguments attacking a judgment "when those arguments were not pressed in the court whose opinion we are reviewing, or at least passed upon by it.")

received equitable relief in the form of a writ of prohibition from the Appellate Division, Second Department. An award of monetary relief is not the sole means of vindicating a plaintiff's constitutional rights under 42 U.S.C. § 1983. The plain language of the statute provides that a state actor who violates a plaintiff's constitutional rights "shall be liable to the party injured in an action at law, *suit in equity*, or other proper proceeding for redress" (emphasis added). As the Second Circuit recognized, *Imbler*'s prohibition applies only to suits for money damages. (Pet.'s Appx. 12a.) Although federal courts generally refrain from enjoining state court prosecutions that are brought in good faith, *see Younger v. Harris*, 401 U.S. 37 (1971), this Court has recognized that in "certain circumstances," a plaintiff may pursue equitable relief pursuant to § 1983 in federal court to enjoin a state court prosecution, *Mitchum v. Foster*, 407 U.S. 225, 230 (1972). Injunctive relief was available to Petitioners in this § 1983 suit, but they did not ask for it because they already had received it.

The Appellate Division called "the issuance of a writ of prohibition" "the appropriate remedy in this matter." (Pet.'s Appx. 249a.) In fact, Petitioners obtained the very remedy they sought, as Petitioners were awarded equitable relief in January of 2009,[6] 22

[6] The Appellate Division amended its decision issuing a writ of prohibition on July 21, 2009 (Pet's Appx. 247a), substituting the phrase "prosecution of the indictment" for the word "matter," thus, allowing Justice Doyle to preside over the indictments for the limited purpose of dismissing them. *See Matter of Vinluan v. Doyle*, 2009 N.Y. App. Div. LEXIS 5917, 2009 N.Y. Slip. Op. 78633(U) (2d Dep't).

months after they were indicted (Pet.'s Appx. 65a), six months after the state supreme court denied Petitioners' motions to dismiss the indictments (Resp. Spota's Appx. 1a-12a), 26 months before the District Court dismissed some of Petitioner's claims in this case based on absolute prosecutorial immunity (Pet.'s Appx. 137a), almost 10 years before the District Court granted Respondents' motions for summary judgment on the remaining claims based on qualified immunity (Pet.'s Appx. 61a), and more than 13 years before the Second Circuit Court of Appeals affirmed the judgment of the District Court (Pet.'s Appx. 1a). The availability of the writ of prohibition undercuts Petitioners' contention that the only means of vindicating their rights is by a suit for damages.[7]

3. While absolute immunity barred them from seeking relief from the prosecutors for the presentation to the grand jury and initiation of the prosecution in state court, Petitioners could and did obtain monetary relief from the Sentosa defendants (Resp. Spota's Appx. 13a-17a), whom Petitioners describe as the "politically powerful nursing-home operator that had deceived them when recruiting them from the Philippines" (Pet. at 1) and depict as the villains in this labor drama that preceded the prosecutions.

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[7] Similarly, the fact that Respondent Spota has been disbarred, *see Matter of Spota*, 184 A.D. 3d 301, 123 N.Y.S.3d 543 (2d Dep't 2020), and is serving time for unrelated charges arising out of his job as prosecutor (Pet. For Cert. 7 n. 2; Pet.'s Appx. 37a n.1) takes the wind out of Petitioners' argument that the system does not deal with errant prosecutors.

In short, even though Petitioners were not entitled to a money judgment against Respondent prosecutors, their rights were vindicated and they received relief both at law and in equity.

III. THE DECISION OF THE SECOND CIRCUIT COURT OF APPEALS WAS CORRECT

Under our adversarial system, the plaintiff is required to articulate claims and to marshal facts supporting those claims, the defendant asserts defenses and counters the plaintiff's facts, and the court applies legal standards to the case presented to it. That is exactly what occurred here.

Judge Bianco, and later the Second Circuit, were presented with a claim that the prosecutor Respondents acted in excess of their jurisdiction in initiating a criminal prosecution and the courts applied the well-established law that holds that prosecutors are absolutely immune from suit for money damages for advocatory functions in excess of their jurisdiction, although they may be held liable if they act in complete absence of jurisdiction. This was the correct result, and Petitioners have pointed to nothing in the record that the District Court overlooked in concluding that Respondents were entitled to absolute prosecutorial immunity for bringing the prosecution against Petitioners or that the Second Circuit ignored in affirming that decision. Petitioners' attempts to rewrite the history of this case by now arguing that Respondents acted without jurisdiction or with racial animus should not be countenanced by this Court.

CONCLUSION

For all of the aforementioned reasons, the petition for writ of certiorari should be denied in its entirety.

Dated: March 20, 2023

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

Appendix A

SUPREME COURT–STATE OF NEW YORK
CRIMINAL TERM, SUFFOLK COUNTY

Short Form Order

Indict. No: 00769(B-K)-07

MOTION DATE: 6-21-07
RELIEF: OMNIBUS

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

ELMER JACINTO, JULIET ANILAO,
HARRIET AVILA, MARK DELA CRUZ,
CLAUDINE GAMAIO, JENNIFER LAMPA,
RIZZA MAULION, JAMES MILLENA,
MA THERESA RAMOS and RANIER SICHON,

Defendants.

P R E S E N T:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

THOMAS J. SPOTA, SUFFOLK
COUNTY DISTRICT ATTORNEY
By: Leonard Lato, Esq.
200 Center Drive
Riverhead, New York 11901

DEFENDANTS' ATTY:
JAMES O. DRUKER, ESQ.
Kase & Druker, Esqs.
1325 Franklin Avenue
Garden City, New York 11530

Defendants, charged with one count of Conspiracy in the Sixth Degree, five counts of Endangering the Welfare of a Chlld and six counts of Endangering the Welfare of a Physically Disabled Person, have moved for omnibus pre trial relief. The People have submitted a memorandum in opposition to the motion and provided the Court with a copy of the minutes of the Grand Jury proceedings that resulted in this indictment.

Defendants move for inspection of the minutes of the Grand Jury proceedings that resulted in this indictment and for dismissal of the charges against them. This aspect of defendants' motion is granted solely to the extent that the Court has inspected the niinutes of the Grand Jury proceedings and finds the evidence legally sufficient to support the charges contained in the indictment (People v. Jennings, 69 NY2d 103, 512 NYS2d 652). The Court finds that each count of the indictment properly charges these defendants with a crime and that the counts are not void for "vagueness". The Court further finds that the instructions to the Grand Jury were complete and proper and that the Grand Jury proceedings were in full compliance with CPL Article 190.

In considering a motion to dismiss an indictment on the basis of insufficient evidence before a Grand Jury, the Court must consider "whether the evidence viewed in the light most favorable to the People, if

unexplained and uncontradicted, would warrant conviction by a petit jury" People v. Jennings, *supra* at p 114; People v. Swamp, 84 NY2d 725, 730, 622 NYS2d 472). Legally sufficient evidence is defined in CPL 70.10(1) as "competent evidence which, if accepted as true, would establish every element of an offense charged." In the context of a Grand Jury proceeding, legal sufficiency means prima facie proof of the crimes charged, not proof beyond a reasonable doubt (People v. Gordon, 88 NY2d 92, 643 NYS2d 498; People v. Mayo, 36 NY2d 1002, 374 NYS2d 609, 337 NE2d 124; People v. Swamp, *supra*). Under these standards of review, there was ample evidence before the Grand Jury to support all counts of the indictment against these defendants. Consequently, the motion by defendants seeking dismissal of the indictment based upon their claim that there was insufficient evidence before the Grand Jury is in all respects denied.[1]

Defendants raise an argument which appears to claim that this prosecution of defendants somehow violates the Thirteenth Amendment to the United States Constitution prohibiting slavery. Defendants argue that since the abolition of slavery in this country, "it has been illegal to convict a person of a crime based upon quitting his or her job." Based upon this premise, defendants ask that the indictment be dismissed.

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[1] With respect to defendant's claim that the People failed to present exculpatory evidence to the Grand Jury and that this failure requires dismissal of the indictment, the court must note that a prosecutor has no obligation to present evidence favorable to the defendant to the Grand Jury (People v. Lancaster, 69 NY2d 20, 511 NYS2d 559).

The Court discerns no basis for the relief defendants seek. Under no view of the facts of this case could it be said that the People were seeking to compel defendants continued employment by any particular entity. Rather, the Grand Jury found sufficient evidence with which to conclude that these defendants should be charged with specific crimes for the actions taken by them, *en masse,* at a time when they were entrusted with the care of certain physically disabled children. There is absolutely no evidence to suggest that this prosecution in any way violates the rights of any of these defendants under the Thirteenth Amendment to the United States Constitution.

With respect to defendants' application to dismiss the indictment in the interests of justice, that application is denied. The Court has examined the argument made by defendants as well as the factors enumerated in CPL 210.40 and does not find that there exists a compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendants would constitute or result in injustice.

With regard to defendants' request for suppression of statements made by them to law enforcement personnel, a hearing pursuant to People v. Huntley (15 NY2d 72, 255 NYS2d 838) shall be held immediately prior to trial to determine the voluntariness of any statements within the meaning of CPL 60.45.

To the extent that the defendants seek to join in the motion by co-defendant Felix Vinluan for omnibus relief, that application is granted to the extent that the decision rendered in connection with

defendant Vinluan's motion shall apply, to the extent applicable, to these defendants as well.

Finally, it should be noted that in their memorandum of law in opposition to the motion by defendants, the People request that the Court conduct a Gomberg inquiry of these defendants at the next date scheduled for a conference. In People v. Gomberg (38 NY2d 307, 379 NYS2d 769), the Court of Appeals held that where one attorney represents more than one defendant in a criminal trial, the Court should conduct an inquiry of defendants to insure that each is aware of the potential risks of joint representation and the right of each defendant to separate counsel. In light of the fact that each of the defendants who have joined in this application are represented by one attorney, the Court will grant the People's request and conduct a Gomberg inquiry of defendants at the next scheduled court date. Each defendant shall be present at that time so that a proper inquiry may be made.

Dated: SEPTEMBER 28, 2007

/s/ Robert W. Doyle
J.S.C.

Appendix B

SUPREME COURT–STATE OF NEW YORK
CRIMINAL TERM, SUFFOLK COUNTY

Short Form Order

Indict. No: 00769A-2007

MOTION DATE: 6-13-07
RELIEF: OMNIBUS

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

FELIX VINLUAN,

Defendant.

P R E S E N T:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

THOMAS J. SPOTA, SUFFOLK
COUNTY DISTRICT ATTORNEY
By: Leonard Lato, Esq.
200 Center Drive
Riverhead, New York 11901

DEFENDANT'S ATTY:
SANDBACK, BIRNBAUM &
MICHELEN
200 Old Country Road, Suite 25
Mineola, New York 11501

Defendant, charged with one count of Conspiracy in the Sixth Degree, one count of Criminal Solicitation in the Fifth Degree, five counts of Endangering the Welfare of a Child, and six counts of Endangering the Welfare of a Physically Disabled Person, has moved for omnibus pre trial relief. The People have submitted a memorandum in opposition to the motion and provided the Court with a copy of the minutes of the Grand Jury proceedings that resulted in this indictment.

Initially, defendant seeks to compel compliance with his demand for discovery, including his demand for any and all exculpatory material, and for a bill of particulars. The People respond that while they are not in possession of any exculpatory material, "defendants are free to inspect and copy all material in the People's possession including all Rosario material." Based upon the People's representations, it appears to the Court that discovery should proceed without the need for any supervision. However, should an issue arise with respect thereto, defend,mt may move for any relief he deems appropriate (*see*, CPL 240.40). It should also be noted that both sides are under a continuing duty to disclose any additional material which is subject to discovery and of which they become aware either before or during trial (CPL 240.60).

With respect to defendant's request for a bill of particulars, the Court is not convinced that defendant has established that the requested particulars are necessary to assist him in adequately preparing his defense (*see,* People v. Iannone, 45 NY2d 589, 412 NYS2d 110; CPL 200.95 subd 5). The detailed indictment in this case provides defendant with sufficient factual information to understand the substance of defendant's conduct encompassed by the charges which the People intend to prove at trial.

Defendant also moves for inspection of the minutes of the Grand Jury proceedings that resulted in this indictment and for dismissal of the charges against him. This aspect of defendant's motion is granted solely to the extent that the Court has inspected the minutes of the Grand Jury proceedings and finds the evidence legally sufficient to support the charges contained in the indictment (People v. Jennings, 69 NY2d 103, 512 NYS2d 652). The Court further finds that the instructions to the Grand Jury were complete and proper and that the Grand Jury proceedings were in full compliance with CPL Article 190. Insofar as defendant seeks to have a copy of the minutes of the Grand Jury proceedings provided to him, the Court finds no basis for the release of those minutes to defendant. The Court does not need the assistance of defendant in making its determination as to the adequacy of the evidence before the Grand Jury (CPL 210.30 [3]).

In moving to dismiss the indictment upon the ground that there was insufiicient evidence before the Grand Jury, defendant argues that his only goal and the only goal of the co-defendant nurses in taking the actions that they did, was to obtain alternative employment for the nurses and release from their three year commitment to their employer. As to the

count of the indictment charging Conspiracy in the Sixth Degree, defendant argues that in order to establish a conspiracy, there must be "a corrupt agreement between two or more individuals to do an unlawful act, unlawful as a means or as an end" (*citing* People v. Flack, 125 NY 324). Defendant asserts that if the claim is that defendants' "unlawful acts" were endangering the welfare of a child or a disabled person, then there must be proof before the Grand Jury that this was the agreement of the parties – to endanger someone's welfare.

In this instance, there was ample evidence before the Grand Jury of the existence of a plan, on the part of defendants, to resign, *en masse*, from their employment as nurses at the Avalon Gardens pediatric unit. There was also substantial evidence before the Grand Jury that the pediatric unit at Avalon Gardens provided care for chronically ill children, many of whom were on ventilators or who needed continual nursing care. The evidence before the Grand Jury further established the critical role played by these nurses in caring for their patients and in ensuring that these ventilators, without which many of the pediatric patients would not be able to breathe, were functioning properly at all times. The Grand Jury had ample evidence before it from which it could conclude that defendants were well aware of the fact that their mass resignation from their critical roles as care givers to these disabled children, without sufficient advance notice or warning to their employer, would likely be injurious to the physical welfare of their patients. The Grand Jury concluded that there was sufficient evidence to establish the existence of an agreement to engage in conduct that would constitute the crimes of Endangering the Welfare of a Child and Endangering the Welfare of a

Disabled Person, and that there was an overt act in furtherance of that agreement. The fact that defendants may have had the further objective that their resignations would somehow enhance their bargaining positions in a labor dispute with their employer, does not absolve them from criminal liability for the consequences of their actions. While a nurse may, often times, have a right to unilaterally resign from his or her position of employment, the actions of these defendants, acting together with forethought and planning, was not a simple resignation from a nursing position. The consequences of their mass resignation could have had disastrous consequences for the very patients with whose care they were entrusted.

Individuals have a right to take action in the exercise of the freedoms guaranteed by the Constitutions and laws of our state and country. However, the freedom to exercise those rights is not absolute. As Justice Oliver Wendell Holmes noted in pointing out the limits of the constitutionally guaranteed right to freedom of speech, "(t)he character of every act is dependent upon the circumstances in which it is done" (Schenck v. U.S., 249 US 47, 51, 39 SCt 247). As Mr. Justice Holmes went on to note, "(t)he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." In this case, the actions of the defendants cannot be judged in a vacuum but must be judged in light of the circumstances under which their actions were taken. The Grand Jury found sufficient evidence to conclude that this defendant entered into an agreement to perform an act which would endanger the welfare of children and disabled persons and that an overt act

was committed in furtherance of that agreement. The Court finds no basis to disturb that conclusion.

In considering a motion to dismiss an indictment on the basis of insufficient evidence before a Grand Jury, the Court must consider "whether the evidence viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant conviction by a petit jury" (*People v. Jennings*, *supra* at p 114; People v. Swamp, 84 NY2d 725, 730, 622 NYS2d 472). Legally sufficient evidence is defined in CPL 70.10(1) as "competent evidence which, if accepted as true, would establish every element of an offense charged." In the context of a Grand Jury proceeding, legal sufficiency means prima facie proof of the crimes charged, not proof beyond a reasonable doubt (People v. Gordon, 88 NY2d 92, 643 NYS2d 498; People v. Mayo, 36 NY2d 1002, 374 NYS2d 609, 337 NE2d l24; People v. Swamp, *supra*). Under these standards of review, there was ample evidence before the Grand Jury to support all counts of the indictment against this defendant. Consequently, the motion by defendant seeking dismissal of the indictment based upon his claim that there was insufficient evidence before the Grand Jury is in all respects denied.[1]

With regard to defendant's request for a hearing pursuant to People v. Huntley (15 NY2d 72, 255 NYS2d 838) to determine the voluntariness of any statements made by defendant to law enforcement

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[1] With respect to defendant's claim that the People failed to present exculpatory evidence to the Grand Jury and that this failure requires dismissal of the indictment, the Court must note that a prosecutor has no obligation to present evidence favorable to the defendant to the Grand Jury (People v. Lancaster, 69 NY2d 20, 511 NYS2d 559).

personnel, that application is granted to the extent that a hearing shall be held prior to trial to determine whether statements given by defendant were voluntary within the meaning of CPL 60.45.

Finally, defendant's request for leave to make further motions is denied at this time. Pursuant to CPL 255.20 subd 1, defendant may make application to the Court for permission to make a pre-trial motion at any time prior to the entry of judgment. However, defendant should be aware that such applications are granted only in instances where good cause is shown for the delay in seeking relief (*see*, People v. Broome, 187 AD2d 949, 590 NYS2d 349).

Dated: SEPTEMBER 28, 2007

/s/ Robert W. Doyle
J.S.C.

Appendix C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Index No.: 10cv0032

JULIET ANILAO, HARRIET AVILA, MARK DELA CRUZ, CLAUDINE GAMAIO, ELMER JACINTO, JENNIFER LAMPA, RIZZA MAULION, JAMES MILLENA, THERESA RAMOS, RANIER SICHON and FELIX Q. VINLUAN,

—against—

THOMAS J. SPOTA, III, Individually and as District Attorney of Suffolk County; OFFICE OF THE DISTRICT ATTORNEY OF SUFFOLK COUNTY; LEONARD LATO, Individually and as an ASSISTANT DISTRICT ATTORNEY OF SUFFOLK COUNTY; COUNTY OF SUFFOLK; SENTOSA CARE, LLC; AVALON GARDENS REHABILITATION AND HEALTH CARE CENTER; PROMPT NURSING EMPLOYMENT AGENCY, LLC; FRANCRIS LUYUN; BENT PHILIPSON; BERISH RUBINSTEIN, SUSAN O'CONNOR and NANCY FITZGERALD,

Defendants.

STIPULATION AND ORDER OF DISMISSAL

WHEREAS, this action was commenced on January 6, 2010, against THOMAS J. SPOTA, III, Individually and as District Attomey of Suffolk County; OFFICE OF THE DISTRICT ATTORNEY OF SUFFOLK COUNTY; LEONARD LATO, Individually and as an ASSISTANT DISTRICT ATI'ORNEY OF SUFFOLK COUNTY and COUNTY OF SUFFOLK (hereinafter, "the Suffolk Defendants") and SENTOSA CARE, LLC; AYALON GARDENS REHABILITATION AND HEALTH CARE CENTER; PROMPT NURSING EMPLOYMENT AGENCY, LLC; FRANCRIS LUYUN; BENT PHILIPSON; BERISH RUBINSTEIN; SUSAN O'CONNOR and NANCY FITZGERALD ("the Sentosa Defendants"); and

WHEREAS, by Order dated March 31, 2011, the Court dismissed the claims against SUSAN O'CONNOR and NANCY FITZGERALD, and certain claims against the Suffolk Defendants; and

WHEREAS, on March 3, 2011, defendant AVALON GARDENS REHABILITATION AND HEALTH CARE CENTER filed a counterclaim against Plaintiffs JULIET ANILAO, HARRIET AVILA, MARK DELACRUZ, CLAUDINE GAMAIO, ELMER JACINTO, JENNIFER LAMPA, RIZZA MAULION, JAMES MILLENA, TERESA RAMOS and RANIER SICHON, and

WHEREAS, by Order dated November 28, 2018, the Court granted summary judgment on the remaining claims as to Defendants THOMAS J. SPOTA III, OFFICE OF THE DISTRICT ATTORNEY OF SUFFOLK COUNTY, LEONARD LATO and COUNTY OF SUFFOLK, and

WHEREAS, Plaintiffs discontinued the action against defendant BERISH RUBINSTEIN; and

WHEREAS, Plaintiffs and the Defendants SENTOSA CARE LLC, AVALON GARDENS REHABILITATION AND HEALTH CARE CENTER, PROMPT NURSING EMPLOYMENT AGENCY, LLC, FRANCRIS LUYUN and BENT PHILIPSON ("Sentosa Defendants") have resolved all of the issues in the case;

NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED by and between the parties undersigned and/or their respective counsel that the above-captioned action is voluntarily dismissed as to the Sentosa Defendants, with prejudice, including all claims against the said defendants, and the Sentosa Defendants hereby dismiss all claims, cross-claims and counterclaims between the said parties, pursuant to the Federal Rules of Civil Procedure 41(a)(I)(A)(ii). Each party to bear its own costs and fees; and

IT IS FURTHER STIPULATED AND AGREED that this Court retains jurisdiction of the matter to the extent necessary to enforce the terms and conditions of any agreement setting forth the resolution of this matter entered into between any of the parties

AND THE CLERK MAY ENTER JUDGMENT IN FAVOR OF DEFENDANTS THOMAS J. SPOTA III, OFFICE OF THE DISTRICT ATTORNEY OF SUFFOLK COUNTY, LEONARD LATO and COUNTY OF SUFFOLK, NANCY FITZGERALD and SUSAN O'CONNOR.

Dated: October , 2019

KASE & DRUKER

/s/

By: James O. Druker
1325 Franklin Avenue
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Garden City, New York 11530
Phone: 516-746-4300
Attorneys for Plaintiffs

CUOMO LLC

/s/ [ILLEGIBLE]

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LIPSIUS BENHAIM LAW

/s/ David BenHaim

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Attorneys for Defendants

Appendix D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK (CENTRAL ISLIP)

CIVIL DOCKET FOR
CASE #: 2:10-10-cv-00032-FB-AKT

Excerpt

Minute Entry for proceedings held before Judge Frederic Block: James Druker, Esq., Oscar Michelen, Esq. for the plaintiff; Ira Lipsius, Esq. and David Ben Hiam, Esq. for defendant Sentosa Care and Amy Marion, Esq. for Mr. Landa, all present. Status conference held on 10/25/2019. The 10/28/19 jury trial and the settlement which was reached on 10/17/19 were discussed. The conflict between the defendants has been resolved and the settlement is placed on the record. (Court Reporter: Annette Montalvo 718 613 2711) (Innelli, Michael) (Entered: 10/25/2019)