NO. 18 -

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IN THE

Supreme Court of the United States

SYED K. RAFI, PhD.

Petitioner,

V.

BRIGHAM AND WOMEN'S HOSPITAL,
CHILDREN'S HOSPITAL BOSTON,
MASSACHUSETTS GENERAL HOSPITAL,
& HARVARD MEDICAL SCHOOL;

and

YALE UNIVERSITY SCHOOL OF MEDICINE,
& Dr. RICHARD LIFTON.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST and SECOND CIRCUITS

APPLICATION TO EXTEND THE TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI

APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

Pro Se Petitioner, Syed K. Rafi, hereby respectfully requests an extension of time, not exceeding 60 days to file a petition for a Writ of Certiorari to review judgments in his two consequentially entwined cases against the respondents at the First Circuit and Second Circuit Courts of Appeal (*Appeal No. 17-1373 & 17-2754, respectively*).

In accordance with the Review on Certiorari Rules of this Court, this Court has jurisdiction to review a judgment in a case entered by a United States Court of Appeals. Under Rule 13 (Review on Certiorari: Time for Petitioning) of this Court, petitioner seeks an extension of time, not exceeding 60 days from the due date to file his petition for Writ of Certiorari in this Court.

Since the two consequentially intertwined case- appeals at the First and Second Circuits (*Appeal No. 17-1373 & 17-2754, respectively*) rendered judgments at different times, and petitioner was awaiting the outcome of his desperate pleas for reconsideration and discretionary review of the rulings at both Circuit Courts, and the last of two responses to such plea (*Exhibit 1*) was rendered by the First Circuit Court on May 3, 2018 (*Exhibit 2*), affirming its March 12, 2018 mandate. The Second Circuit Court issued its response after petitioner's plea (dated March 28, 2018) seeking reconsideration and discretionary review of its rulings by issuing its mandate on 04/24/2018 (*Exhibit 3*) without considering even the timely filed petitioner's plea for discretionary review and reconsideration given the valid responses and arguments therein (*Exhibit 4*).

Additionally, petitioner being *Pro Se* as well as without any legal education and training, needs the extension of time to learn and properly prepare his petition for Writ of Certiorari.

This time extension will also enable *pro se* petitioner to seek *pro bono* legal assistance from a law firm, which is a time-consuming endeavor.

The following are the tentative and partial list of Constitutional Rights and Civil Rights questions that will presented in the petition for Writ of Certiorari, given the

lower Courts' failure to address them as if it is beyond their realm and/or their rulings contradict that of the Supreme Court in the application of the Federal Laws and Statutes therein:

I. "IF GOVERNMENT REQUIRES OR INDUCES A PRIVATE PARTY TO ENGAGE IN LAW ENFORCEMENT, ALL RELEVANT CONSTITUTIONAL RESTRAINTS APPLY".

The Supreme Court ought to rule on petitioner's assertion that <u>all</u> respondents / appellees are to be considered as "State Actors" for the purpose of petitioner's Section 1983 claims, given the augmenting legal theory that has been advanced by Jed Rubenfeld (*a leading scholar of constitutional law, privacy, the First Amendment, and criminal law at Yale University School of Law*) which has been laid out in his peer-reviewed article:

"Privatization, State Action, and Title IX: Do Campus Sexual Assault Hearings Violate Due Process?", wherein he extensively argues that "If Government Requires or Induces A Private Party to Engage in Law Enforcement, All Relevant Constitutional Restraints Apply".

This is exactly what the Obama administration's Department of Education did in 2011 when it instructed universities, **on pain of losing federal funding,** to investigate, adjudicate, and punish all allegations of sexual assault. That is, although the government also demanded that universities shrink due process protections for the accused, by deputizing them to engage in law enforcement in addressing allegations of sexual misconduct, **the administration in effect imposed on them an obligation to comply with constitutional guarantees of due process and equal protection.** (*emphasis added*).

See: Rubenfeld, Jed, ***Privatization, State Action, and Title IX: Do Campus Sexual Assault Hearings Violate Due Process?*** (October 21, 2016). **Yale Law School, Public Law Research Paper** No. 588. Available at SSRN: https://ssrn.com/abstract=2857153 or http://dx.doi.org/10.2139/ssrn.2857153.

"On April 4, 2011, the United States Department of Education's Office for Civil Rights (OCR) sent a nineteen-page <u>letter to American colleges and universities</u>. Opening with the government-standard but peculiar salutation, "Dear Colleague"—as if the sender were a fellow academic, or, since that was not so, <u>as</u>

if academics were fellow federal administrative agents—" (*Id.* at page 20, paragraph 3; *emphasis added*).

'What government cannot itself do without violating constitutional rights, it cannot induce private individuals to do. Whenever the federal government privatizes its law enforcement powers, constitutional restraints apply in full. They apply, that is, not only to specifically mandated acts, but to the private parties' discharge of these powers in their entirety". (*Id.* at page 69, paragraph 1).

II. IN ACTUALITY, THERE IS NO SUCH HARDLINE TEST TO DETERMINE THE KIND OF GOVERNMENTAL INVOLVEMENT NECESSARY TO FIND THAT A NON-GOVERNMENTAL EMPLOYER ACTED UNDER COLOR OF LAW

Petitioner has asserted at the District Courts as well as at the Appeal Courts that respondents / appellees violated his Civil Rights as well as his Constitutional provisions, in particular, under the Fourteenth Amendment, based on his extensive evidencing (*Exhibits*) that defendants in fact caused reckless and ceaseless coercive job retaliations at HMS in collusion with Dr. Morton, and **thus violated his Civil Rights and Fourteenth Amendment rights.**

But the District Court of Connecticut opted to assert that since Yale University is a private entity, it is NOT a "State Actor", and therefore, plaintiff's Constitutional provisions- violations claim is rendered *"null and void"*.

But, in accordance with Supreme Court's multiple rulings, petitioner / plaintiff has extensively evidenced:

(1) **The State of Connecticut's "pervasive entwining"** with the leadership of the Yale University and with its School of Medicine *per se (Brentwood Academy v. Tennessee Secondary School Athletic Association, 535 U.S. 971 (2002))*; *(ECF # 68, pages 14 (XI) thro' 28 (para 3));*

(2) The State of Connecticut's long-standing and on-going "**joint enterprise**" and "**symbiotic relationship**" with YSM and its University (*Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961)*); **(***ECF # 68, pages 14 (XI) thro' 28 (para 3); Exhibits # 9 &12, therein; ECF # 64: Exhibits # 4 & 5 therein; and* **http://www.psychiatry.yale.edu);**

(3) YSM in the service of delivering public health education and health care at the state level, **"a vital public function"**, *(See, Marsh v. Alabama, 326 U.S. 501 (1946)):*

---far and beyond satisfying the federal judiciary's nearly unanimous requirement of MORE involvement of State, *in addition to (mere) financial assistance to a private university or professional school, to render the actions of the institution state action for purposes of § 1983. (Huff v. Notre Dame High School, 456 F. Sup. 1145, 1148 (D. Conn. 1978) (Burns, J.).*

The Supreme Court as well as lower Courts have used "*a variety of approaches to answer this question*". (*West v. Atkins,* 487 U.S. 42 (1988)): whether the defendant was performing a traditionally exclusive public function (*Jackson v. Metropolitan Edison Co.,* 419, U.S. 345 (1974). "*We have, of course, found state action present in the exercise by private entity of powers traditionally exclusively reserved to the State.*" 419 U.S. at 352); whether the defendant received "significant encouragement" from the state or felt the ramifications of the state's exercise of its "coercive power," *(Blum v. Yaretsky,* 457 U.S. 991 (1982); whether the defendant participated in a joint activity with the government (*Lugar v. Edmonton Oil Co.,* 457 U.S. 922 (1982). *"[A] private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a "state actor....."*.); or, whether the defendant had a "symbiotic relationship" with the government. (*Burton v. Wilmington Parking Auth.,* 365 U.S. 715 (1961).

Most recently, the Supreme Court found that a defendant was acting under the color of the law when there was "*entwinement*" of the state and the defendant (*Brentwood Acad. V. Tennessee Secondary Sch. Athletic Ass'n,* 531 U.S. 288 (2001). In *Evans v. Newton,* 382 U.S. 296 (1966) a Fourth Amendment equal protection case, the Court noted that **"[c]onduct that formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action."** 382 U.S. at 299).

The Supreme Court has clearly emphasized that merely because the defendant's actions do not qualify under one criterion does not mean that the action was not taken under color of law (*Brentwood Acad. V. Tennessee Secondary Sch. Athletic Ass'n,* 531 U.S. 288 (2001): *"[T]he facts justify a*

conclusion of state action under the criteria of entwinement, a conclusion in no sense unsettled merely because other criteria of state action may not be satisfied by the same facts: ***"If one criterion is satisfied, the requirement can be met".***

It Should Be Noted That Fourteenth Amendment To The Constitution Guaranteed Civil Rights And Freedom To Move Even To The Slaves:

Looking back at this nation's history of human rights, after the abolishment of slavery during 1865 via Thirteenth Amendment to the Constitution, it is indeed the Fourteenth Amendment that guaranteed Civil rights and freedom to move even to the slaves who moved to the Northern slavery- free States (which is akin to appellant, Dr. Rafi's move during 2004 from Yale School of Medicine, New Haven, Connecticut, to Boston, Massachusetts State, to take up a position at Harvard Medical School, given Dr. Morton's interest in his candidacy for a professional clinical cytogenetics position at her diagnostic cytogenetic laboratory at Brigham and Women's Hospital, HMS, Boston, Massachusetts), escaping from their possessive initial slave owners in the State of Tennessee (which is akin to appellees, Dr. Lifton and Yale School of Medicine in the State of Connecticut claiming back possession of Dr. Rafi (appellant), disregarding his written plea to Dr. Lifton (appellees) to let him take up the position at Dr. Morton's laboratory at HMS after having completed his professional medical genetics training at Dr. Lifton's genetics department at YSM).

"AS A MODERN DAY WHITE COLLAR SLAVE",
Dr. RAFI *(Petitioner)* WAS CAPTURED AND HELD INDEFINITELY".

Just like the "slavery free Northern States" were required to capture and return the escaped slaves back to their initial slave owners in the Southern States under "the Fugitive Slave Law", which was also called "Blood Hound Law" for the dogs that were used to track down the runaway slaves (see, Lennon Canor (2016-08-01). "Slave Escape, Prices, and the Fugitive Slave Act of 1850". The Journal of Law and Economics, 59, (3): 669-695.), "as a modern day white collar slave", Dr. Rafi (appellant) was captured and held indefinitely by Dr. Lifton / YSM through conspiratorial collusion with Dr. Morton at HMS, which compelled Dr. Morton to recklessly and ceaselessly refuse consideration of any of Dr. Rafi's several dozen professional clinical cytogenetics job applications at her diagnostic laboratory, at her medical genetics research laboratory, and motivated her to negatively influence her colleagues at HMS to prevent Dr. Rafi being hired by them instead.

As "a domino-effect", of this alleged illegal conspiratorial collusion between Dr. Morton (HMS) and Dr. Lifton (YSM), Dr. Rafi became a "pariah" in his professional field of clinical / diagnostic cytogenetics and medical genetics around the nation to this day.

It is important to note that even during the period of "Fugitive Slave Law", the Supreme Court in the case of *Prigg v. Pennsylvania* (1842) ruled that free Northern States did NOT have to offer aid in the hunting or recapturing of the escaped slaves from the Southern States.

The Fourteenth Amendment to the Constitution indeed provided for federal government oversight to protect the Fourteenth Amendment rights of all citizens (NOT excluding naturalized citizens, such as petitioner / appellant in this case!), meaning that anyone could appeal to the federal government to protect the Fourteenth Amendment rights, as appellant in this case is currently engaged in. **Therefore, the Supreme Court ought to reassert its rulings in this instance that Yale and Dr. Lifton (*respondents / appellees*) were acting under the color of the law given their "*entwinement*" with the state** (*Brentwood Acad. V. Tennessee Secondary Sch. Athletic Ass'n,* 531 U.S. 288 (2001), and **governmental policies are so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action."** 382 U.S. at 299).

III. CAUSE OF ACTION UNDER SPENDING CLAUSE 1 (*ARTICLE I, SECTION 8*) OF THE U.S. CONSTITUTION

The Spending Clause 1 (*Article I, Section 8*), of the U.S. Constitution which has been widely recognized as providing the Federal government with the legal authority to offer Federal grant funds to states and localities **that are contingent on the recipients refraining from violating the Civil Rights as well as the Constitutional provisions.**

The Supreme Court in its 1987 decision in *South Dakota v. Dole* 483 U.S. 203, 205-08 (1987) held that legislation enacted pursuant to the Spending Clause must be in pursuit of the "general welfare", and **that any conditions attached to**

the receipt of federal funds must NOT violate various Civil Rights as well as provisions of the Constitution.

See, **"The Federal Government's Authority to Impose Conditions on Grant Funds"**, Brian T. Yeh, Legislative Attorney, March 23, 2017, **Congressional Research Service** 7-5700; www.crs.gov R44797: https://fas.org/sgp/crs/misc/R44797.pdf..

Therefore, in this instance, the Supreme Court ought to reassert its 1987 decision in *South Dakota v. Dole* 483 U.S. 203, 205-08 (1987) that legislation enacted pursuant to the Spending Clause must be in pursuit of the "general welfare", and that any conditions attached to the receipt of federal funds must NOT violate various Civil Rights as well as provisions of the Constitution.

It should be noted that additional questions may be raised in the petition for Writ of Certiorari concerning the lower Courts' treatment of petitioner's allegations under the following Constitutional Laws and Civil laws:

IV. **CAUSE OF ACTION UNDER 42 U.S.C. § 2000d-4a]:**
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964- AS AMENDED.

V. **ALLEGED CAUSE OF ACTION UNDER 42 U.S.C. § 1985(3):**
CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS.

VI. **ALLEGED CAUSE OF ACTION UNDER 42 U.S.C § 1986:**
IT IS UNLAWFUL TO NEGLECT OR REFUSE TO PREVENT CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS.

VII. **ALLEGED ABUSE OF RULE 12(b)(6) DEFENSES BY LOWER COURTS IN THESE SUITS WHICH ARE AGAINST PRIVATE–EMPLOYERS:** *SWIERKIEWICZ V. SOREMA N.A.*, 534 U.S.506 (2002).

VIII. **THE DENIAL OF JURY TRIAL IN THESE SUITS:** ***AMENDMENT VII states that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.***