Application No. 18 – 17A1294

IN THE

Supreme Court of the United States

SYED K. RAFI, PhD.

Petitioner,

V.

and

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

Respondents.

BRIEF FOR *PRO SE* PETITIONER

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

QUESTIONS PRESENTED

1 If Government Requires or Induces A Private Party to Engage in Law Enforcement, All Relevant Constitutional Restraints Do Apply?

2. Does The Federal Government's Authority To Impose Conditions On Grant Funds, In Accordance With The Supreme Court's Decision In *South Dakota V. Dole* 483 U.S. 203, 205-08 (1987), Allow Petitioner To Sue The Federal Funds Receiving Respondents For The Alleged Egregious Violation Of Petitioner's Constitutional Rights Under The Fourteenth Amendment, Fifth Amendment, And Violation Of His Civil Rights- Under The Legislation Enacted Pursuant To The Spending Clause (*Article I, Section 8)* Of The U.S. Constitution?

3. Yale School of Medicine and Dr. Richard Lifton (*Respondents*)- are to be considered as *"State Actors"* for the purpose of Petitioner's claim under 42 U.S.C.§ 1983 for the alleged egregious violation of his Constitutional Rights under the Fourteenth and Fifth Amendments as a naturalized citizen And Violation Of His Civil Rights– given the State Of Connecticut's "Pervasive Entwining with", "Joint Enterprise", "Symbiotic Relationship", And "performing A State-wide Vital Public Function- as an integral part of Yale School of Medicine and its principal Investigators, such as Dr. Lifton?

4. Did the District Court "Blunder" by Determining That Title VI Claims Cannot Be Asserted Against Dr. Lifton, "As Title VI Is Only Applicable to Programs Receiving Federal Assistance" *(See, District Court ECF # 78, Page 7, Para 3)*– which the Circuit Court failed to address?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES

PEER-REVIEWED PUBLISHED ARTICLES:

WEB SITE REFERENCES

CONSTITUTIONAL PROVISIONS

STATUTES AND RULES

Application No. 18 – 17A1294

IN THE
Supreme Court of the United States

SYED K. RAFI, PhD.

Petitioner,

V.

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

Respondents.

BRIEF FOR *PRO SE* PETITIONER

OPINIONS AND JURISDICTION

The Second Circuit issued its mandate on 04/24/2018 (*Appendix A*) denying *pro se* appellant's motion for appointment of counsel, and dismissed the appeal stating, because it lacks an arguable basis either in law or in fact, citing *Neitzke v. Williams,* 490 U.S. 319,325 (1989), and 28 U.S.C.1915(e).

But the District Court opted to dismiss the complaint under Federal Rules of Civil Procedure 12(b)(2) and 12(b)(5) (*Appendix B*).

This petition for Writ of Certiorari has been filed invoking the jurisdiction of this Court under 28 U.S.C. 1254.

Pro Se petitioner filed an application for an extension of time within which to file a petition for a writ of certiorari in this case, and on May 28, 2018, Justice Ginsburg graciously extended the time to and including September 14, 2018

(Appendix C), within which time this petition is being filed.

STATEMENT

FIFTH AMENDMENT TO THE CONSTITUTION:

> **Requires that "Due Process of Law", also known as "Due Process Clause"- be part of any proceeding that denies a citizen "life, liberty or property".**

THE 14TH AMENDMENT TO THE U.S. CONSTITUTION: SECTION 1:

> **All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.**
>
> **No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprives any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

Petitioner has asserted at the District Court as well as at the Appeal Court that respondents / defendants, Yale School of Medicine (YSM) and Dr. Richard Lifton therein-- **violated his Civil Rights as well as his Constitutional provisions under the Fourteenth Amendment**, based on his extensive evidencing that respondents in fact caused reckless and ceaseless "coercive job retaliations" at Brigham and Women's Hospital (BWH) / Harvard Medical School (HMS) in collusion with Dr. Cynthia Morton, and consequently his high-paying and in-demand "professional" clinical diagnostic cytogenetics career ended. This alleged continuing coercive retaliations (*in-order to coerce Dr. Rafi (petitioner) to return back to YSM in*

order the facilitate the return of yet another faculty member avoiding law suit against YSM by a disgruntled third party alleging racial discrimination for his removal from the YSM- faculty position) egregiously violated his Constitutional Rights under the Fourteenth and Fifth Amendments as a naturalized citizen and violated his Civil Rights.

It Should Be Noted That the 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.

As the District Court has pointed out, plaintiff has requested "appropriate equitable relief against the defendants as allowed by ...42 U.S.C. § 1983." (*See, Renewed Complaint at 35, ECF # 51;* also see, *ECF # 68, pages 14 through 34).* **But, the District Court has failed to consider in earnest plaintiff's request for "appropriate equitable relief against the defendants as allowed by ...42 U.S.C. § 1983, additionally alleging Constitutional Rights-violations under the Fourteenth Amendment (and under the Fifth Amendment) for having forever denied the freedom to move to Boston (*and even to other places around the nation as well) as a professional clinical cytogeneticist*) to assume a professional position at Brigham and Women's Hospital, Harvard Medical School– after petitioner had successfully completed his professional– American Board of Medical Genetics (ABMG)–training at Yale School of Medicine at its Genetics Department—under the Chairmanship of Dr. Richard Lifton (*respondent / defendant*).**

42 U.S.C. § 1983 also functions as an enforcement tool for retaliation while acting under color of law. In Vega v. Hempstead Union Free Sch. Dist., 127 FEB 1661 (2nd Cir. 2015), the court held that the plaintiff, a teacher in the defendant school district, could bring a retaliation claim under Section 1983 against the supervisor who, acting under the color of law, retaliated against him for opposing discrimination (based on his ethnicity) in the terms of his employment. In *Hill v. City*

of Pine Bluff, 696, F. 3d 709, 116 FEB 407 (8TH Cir. 2012), **the court recognized that retaliation claims may be brought under Section 1983,** (also see, *Dougherty v. Barry,* 604 F. Supp. 1424, 37 FEB 1169 (D.D.C. 1985).

REASONS FOR GRANTING THE PETITION

Seeking Answers to The Hitherto Unanswered Following Questions since they are also serving as novel but sound legal bases for petitioner's certain claims in this litigation. Perhaps due to their novelty in validating petitioner's Constitutional Rights under the Fourteenth and Fifth Amendments as a naturalized citizen, as well as Civil Rights violation claims, the lower courts have utterly failed to consider their validity since they defy conventional norms.

The Second Circuit has a cited ***Neitzke v. Williams,*** 490 U.S. 319,325 (1989) in its denial of appellant's motion for reconsideration (*Appendix A,* stating that "the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." The Circuit has also opted to cite 28 U.S.C. § 1915(e) in its dismissal of petitioner's motion for reconsideration. 28 U.S.C. § 1915 (e), in its applicable part, states that the action or appeal either: (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

APPELLANT'S RESPONSE, AS HAS BEEN PRESENTED AND ARGUED IN HIS MOTION FOR RECONSIDERATION, TO CIRCUIT COURT'S DISMISSAL OF THE APPEAL CITING ***Neitzke v. Williams,*** 490 U.S. 319,325 (1989) *(Appendix D).*

APPELLANT, DR. RAFI *VERSUS* APPELLANT, MR. WILLIAMS IN *Neitzke v. Williams*, 490 U.S. 319,325 (1989)

"Unlike the prisoner- appellant, Williams in *Williams v. Faulkner*, *837 F.2d 304 (1988)*- *who had no constitutionally protected liberty interest in remaining in a particular wing of a prison*, appellant, Dr. Rafi in this case (*as a free naturalized citizen*) is endowed with constitutionally protected liberty and freedom to move (*as enshrined in the Constitution under the Fourteenth Amendment*) to Harvard Medical School (HMS) to take up a position at Morton's professional clinical cytogenetics laboratory, that too upon Dr. Morton's initial invitation to do so, after he had successfully completed his professional ABMG board training in clinical cytogenetics at Yale School of Medicine (YSM) during 2004, and had expressly submitted a written letter to Dr. Lifton, Chairman of Genetics Department (*where Dr. Rafi did his training and worked*) at YSM, indicating therein his decision to move to HMS (Boston, MA) given the unethical and exploitative training and work environment at his department's clinical cytogenetics laboratory.

But, Dr. Lifton, being the Chairman of Genetics Department, YSM, using his professional and personal influence at HMS *(where Dr. Lifton had worked prior to his move to YSM)*, allegedly conspired with plaintiff's potential professional clinical cytogenetics employer, Dr. Morton at Brigham and Women's Hospital (BWH), Boston, MA (HMS), to prevent appellant from being hired by Dr. Morton, and thus coerced Dr. Rafi to accept a position at appellees' Genetics Department instead, in order to facilitate the re-hiring of Dr. Barbara Pober along with appellant, Dr. Rafi to safeguard against a potential racial discrimination, retaliation, First Amendment

rights- violation law suit by a disgruntled Arab-Palestinian minority former genetics department (YSM) faculty member, namely, Dr. Mazin Qumsiyeh, whose faculty position was abruptly terminated by appellees.

When appellant refused to return to YSM, understandably with the consent of YSM authorities, **Dr. Lifton in his official and personal capacities was instrumental in permanently sabotaging plaintiff's high-paying and in-demand professional clinical cytogenetics employment opportunities** that plaintiff had initially secured at BWH during 2004, as well as multitudes of subsequent such professional clinical cytogenetics and medical genetics research job opportunities that plaintiff had applied for at BWH, and at HMS as a whole, ever since. As a *"domino effect" of this alleged on-going coercion and collusion, appellant's professional job opportunities around the nation were also retaliated against.*

Thus, Dr. Lifton / YSM ceaselessly and recklessly violated plaintiff's Civil Rights and the Constitutional provisions as a naturalized citizen particularly under the Fourteenth Amendment's provisions of *life, liberty, and the pursuit of happiness*.

Wherefore, the Supreme Court should grant this petition for Writ of Certiorari, given the novelty of the following questions presented for its consideration, to consider their validity in petitioner's case which has alleged egregious and continuing violations of petitioner's Constitutional Rights under the Fourteenth and Fifth Amendments as a naturalized citizen, as well as his Civil Rights.

APPELLANT'S RESPONSES TO DISTRICT COURT'S "*UNFOUNDED*" RULINGS UNDER F.R.C.P.12(B)(2) AND F.R.C.P.12(B)(5)

I. FEDERAL RULE OF CIVIL PROCEDURE 12(B)(2) REQUIRES DISMISSAL OF AN ACTION ONLY WHEN THE COURT LACKS PERSONAL JURISDICTION OVER THE DEFENDANT.

Plaintiff, *pro se,* has established firmly personal jurisdiction over the defendant, given that Yale School of Medicine and Yale University are an integral part of State of Connecticut. Plaintiff was an employee of Yale University at the Yale School of Medicine when the alleged violations transpired in its entirety, and during this alleged time of the coercive and retaliatory violations. Therefore, the question of 12(b)(2) claim about the principal defendant in this case, namely, Yale School of Medicine and Yale University **is preposterous**.

Next, the Co-defendant in this case, Dr. Richard Lifton continued to serve as senior tenured faculty when plaintiff, Dr. Rafi left Yale after completing his professional training there. Yale orchestrated the alleged continuous violations of Dr. Rafi's Constitutional and Civil Rights through Dr. Lifton, as Chairman of Yale Genetics Department, and therefore, he is being sued only in his official capacity, as he was an official agent of Yale.

Moreover, Dr. Richard Lifton, who has been alleged to have orchestrated the continuous coercive and retaliatory violations as a senior faculty member of Yale and on behalf of Yale, has been a long-term employee of Yale School of Medicine as Sterling Professor of Genetics and Chairman of Genetics Department of Yale University- School of Medicine. Although he currently resides in New York serving

as the President of Rockefeller University, he continues to serve at Yale as an Adjunct Professor of Genetics, as has been unequivocally evidenced at the District Court by plaintiff, proving the existence of a ground for jurisdiction over the Co-defendant Dr. Lifton. **See,** *Rannoch, Inc. v. Rannoch Corp.,* 52 F. Supp. 2d 681, 683-84 (E.D. Va. 1999) (quoting *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989)).

Therefore, plaintiff's claims arise out of those activities that were directed by the defendants "collectively" at the State of Connecticut, and therefore, the exercise of personal jurisdiction is constitutionally justifiable. See, *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002) (citations omitted).

II. FEDERAL RULE OF CIVIL PROCEDURE 12(B)(5) DISMISSAL BY THE DISTRICT COURT ALLEGING INSUFFICIENT SERVICE OF PROCESS IS UNFOUNDED IN THIS CASE.

Even if it is valid for argument sake, the law is settled in the Ninth Circuit Court of Appeals that a defendant must object to the insufficiency of service before filing any answer to a complaint. If a defendant fails to object before filing an answer, any defects in service are deemed waived. See *Benny v. Pipes,* 799 F.2d 489, 492 (9th Cir. 1986) (internal citations and quotations omitted), see also *Jackson v. Hayakawa,* 682 F.2d 1344, 1347 (9th Cir.1982).

Therefore, petitioner requests granting of this petition for Writ of Certiorari to check proper application of the rules and to prevent callous dismissals of *pro se* petitions by lower courts, prior to any discovery to establish the credibility

of the cases, particularly in employment related cases, and thereby, denying trial by jury requests.

QUESTION 1

1 If Government Requires or Induces A Private Party to Engage in Law Enforcement, All Relevant Constitutional Restraints Do Apply ?

QUESTION 1- ARGUMENTS:

This crucial claim of imposing an obligation to comply with constitutional guarantees of due process and equal protection, based on government requiring or inducing private Universities (including Yale) to engage in law enforcement, has NOT been answered by the lower Courts in this case, and therefore, plaintiff urges this Supreme Court to consider this legally sound and extensively researched claim that has been advanced by a leading scholar of constitutional law, privacy, the First Amendment, and criminal law at the Yale University Law School, as it confers "State Actors" status to the defendants along with the University, for the purpose of plaintiff's Section 1983 claims against them.

The District Court as well as the Appeal Court have not passed any judgment concerning this claim of "State Actors"- by plaintiff based on the legal theory of federal government administration in effect having imposed on the defendants, along with the University an obligation to comply with constitutional guarantees of due process and equal protection, by conferring on them "State Actor" status, as presented below.

The Supreme Court ought to rule on petitioner's assertion that the respondents / appellees are to be considered as "State Actors" for the purpose of petitioner's Section 1983 claims and to raise the Constitutional violation claim under the Fourteenth and Fifth Amendments, 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
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2857153

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

Thus, appellant has had alleged under 42 U.S.C. § 1983- violation of his Constitutional Rights under the Fourteenth and Fifth Amendments, since to *prevail in a claim under section 1983, petitioner must prove the alleged conduct* occurred either under a federal law, or under color of state law, and this conduct deprived petitioner of rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution.

Appellant has claimed that appellees are to be considered as "State Actors" for Section 1983 claims under the legal theory that has been theorized and extensively argued in his article. Appellant in his motions at the lower courts emphasizing therein the egregious continuous violations of his Civil Rights and Constitutional Right under the Fourteenth and Fifth Amendments, has pleaded as follows:

1. It Should Be Noted That Fourteenth Amendment to The Constitution Guaranteed Civil Rights and Freedom to Move Even to The Slaves.

2. "As A Modern-Day White-Collar Slave", Dr. Rafi *(petitioner / appellant)* Was Professionally Captured and Held Indefinitely by Dr. Morton at Brigham and Women's Hospital, HMS, Boston on behalf of Yale School of Medicine, and Dr. Lifton.

3. 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.

4. Petitioner's naturalized citizenship unambiguously guarantees life, liberty to choose, and freedom to move under the Fourteenth Amendment to the Constitution, since "*all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside*";

5. "The right to self-determination is an integral element of basic human rights and fundamental freedoms". Therefore, appellant has claimed a cause of action against the appellants Under 42 U.S.C. § 1983- for the alleged egregious violation of his Constitutional Rights:

(i) Under the provision of the Fourteenth and Fifth Amendments for the alleged deprivation of his citizenship rights, and

(ii) Under the provision of the Fifth Amendment, for the long-standing egregious alleged deprivation of life and liberty without due process of law.

The District Court as well as the Circuit Court in this litigation have utterly failed to consider petitioner's claim that "If Government Requires or Induces A Private Party to Engage in Law Enforcement, All Relevant Constitutional Restraints Apply"- based on the peer-reviewed research article by Professor Rubenfeld.

WHEREFORE, Supreme Court ought to consider this pivotal game-changing assertion in this peer-reviewed legal research article by this eminent Constitutional Law expert so that petitioner could additionally validate his claim under 42 U.S.C.§ 1983 affirming that respondents, either under a federal law, or under color of state law, deprived petitioner of rights, privileges, or immunities guaranteed under federal law and/or the U.S. Constitution.

QUESTION 2

2. Does The Federal Government's Authority To Impose Conditions On Grant Funds, In Accordance With The Supreme Court's Decision In *South Dakota V. Dole* 483 U.S. 203, 205-08 (1987), Allow Petitioner To Sue The Federal Funds Receiving Respondents For The Alleged Egregious Violation Of Petitioner's Constitutional Rights Under The Fourteenth Amendment,

Fifth Amendment, And Violation Of His Civil Rights-- Under The Legislation Enacted Pursuant To The Spending Clause (*Article I, Section 8)* Of The U.S. Constitution?

QUESTION 2- ARGUMENTS:

Secondly, 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: Available at: 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 (*Yale School of Medicine as*

well as Dr. Lifton) must NOT violate various Civil Rights as well as provisions of the Constitution.

CLAUSE 1 OF THE U.S. CONSTITUTION

Commonly known as the Spending Clause, Article I, Section 8, Clause 1 of the U.S. Constitution 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 engaging in, or refraining from, certain activities.**

However, the Supreme Court has articulated certain limitations on the exercise of this power. In its 1987 decision in *South Dakota v. Dole* 483 U.S. 203, 205-08 (1987) (quoting *Pennhurst State Sch. & Hosp.,* 451 U.S. at 17), which arguably remains the leading case regarding the use of the federal government's conditional spending power, the Court held that legislation enacted pursuant to the Spending Clause must be in pursuit of the "general welfare."

IN ADDITION, THE *DOLE* COURT HELD THAT ANY CONDITIONS ATTACHED TO THE RECEIPT OF FEDERAL FUNDS MUST:

(1) Be unambiguously established so that recipients can knowingly accept or reject them;

(2) Be germane to the federal interest in the particular national projects or programs to which the money is directed;

(3) NOT violate other provisions of the Constitution, such as the First Amendment OR the Due Process OR Takings Clauses of the Fifth Amendment; and

(4) Not cross the line from enticement to impermissible coercion, such that states have no real choice but to

accept the funding and enact or administer a federal regulatory program."

(Emphasis added).

FEDERAL GRANTS

The federal government may offer grants to nonfederal entities in furtherance of national priorities. Federal grant programs must be authorized by legislation, which establishes the terms and conditions for individual grant programs.

Federal agencies award grants by executing a grant agreement with the recipient that incorporates the statutory requirements for the grant, as well as any administrative requirements specified in conditions unambiguous and set forth prior to acceptance.

As indicated above, under the relevant Supreme Court precedents, federal grant conditions must be set forth unambiguously before a recipient enters into a grant agreement with the federal government.

IN ITS 1981 DECISION IN *PENNHURST STATE SCHOOL AND HOSPITAL V. HALDERMAN* (451 U.S. 1 (1981); *NAT'L FED'N OF INDEP. BUS. (NFIB) V. SEBELIUS,* 567 U.S. 519, 132 S. CT. 2566 (2012)), **THE SUPREME COURT EXPLAINED THAT THIS RESTRICTION ARISES BECAUSE A GRANT IS "MUCH IN THE NATURE OF A CONTRACT" BETWEEN THE STATES AND FEDERAL GOVERNMENT (*OR BETWEEN A PRIVATE INSTITUTION / ENTITY AND FEDERAL GOVERNMENT*).**

IN THE EVENT OF NONCOMPLIANCE

Federal agencies that administer grant programs may monitor recipients for compliance with grant conditions and terminate and recoup funding in the event of noncompliance. See, e.g., *Bell v. New Jersey*, 461 U.S. 773, 790-91 (1983) (*Requiring*

States to honor the obligations voluntarily assumed as a condition of federal funding before recognizing their ownership of funds simply does not intrude on their sovereignty).

WHEREFORE, Supreme Court ought to re-assert its decision **in *South Dakota V. Dole* 483 U.S. 203, 205-08 (1987)- that the federal funds recipient-respondents must NOT violate provisions of the Constitution– to validate petitioner's claim** under 42 U.S.C.§ 1983 alleging that respondents, either under a federal law, or under color of state law, deprived his rights, privileges, or immunities guaranteed under federal law and/or the U.S. Constitution.

QUESTION 3

3. Yale School of Medicine and Dr. Richard Lifton (*Respondents*)- are to be considered as *"State Actors"* for the purpose of Petitioner's claim under 42 U.S.C.§ 1983 for the alleged egregious violation of his Constitutional Rights under the Fourteenth and Fifth Amendments as a naturalized citizen And Violation Of His Civil Rights-- given the State Of Connecticut's "Pervasive Entwining with", "Joint Enterprise", "Symbiotic Relationship", And "performing A State-wide Vital Public Function- as an integral part of Yale School of Medicine and its principal Investigators, such as Dr. Lifton?

QUESTION 3- ARGUMENTS:

Plausible "*State Actor*"- Status Claim for The Defendants Based on The State of Connecticut's "Pervasive Entwining", "Joint Enterprise", "Symbiotic Relationship", And "A Vital Public Function- as an integral part with the Defendants"-

CRITERIA AND FACTS:

It should be noted that Rafi (*plaintiff / appellant / petitioner*) has NOT tried to seek remedy under 42 U.S.C.§ 1983 without extensively arguing in favor of plausible "State Actor"- status or under for the defendants, Yale School of Medicine and Dr. Lifton (*see, ECF # 68, pages 14 to 34*). It should be emphasized that the defendants in this case are Yale School of Medicine (YSM) and Dr. Richard Lifton. **Yale University *per se* has not been named as the defendant.** Therefore, the relevant question here is whether Yale School of Medicine (YSM) along with its federal as well as State of Connecticut- research and other grants- funds receiving and utilizing principal investigators- such as Dr. Lifton could be considered as a "State Actor" for plaintiff's **42 U.S.C.§ 1983** claims in this case.

It is apparent that the District Court has opted to favor the defendants by very superficially narrating that YSM – *"works closely with the Connecticut Mental Health Center"....(ECF # 78, page 27, para 3, line 3)*, while plaintiff, to the contrary, has **evidenced:**

(1) Intrinsically direct and permanent involvement of the State of Connecticut with YSM-Connecticut Mental Health Center (*see ECF # 68, page 17, # IX; also see, pages 27, para 2, through page 28, para 3*);

(2) Direct long-lasting and on-going State Government's engagement and collaboration with Yale medical school to enable state-wide delivery of mental health and addictions services;

(3) State dictating and/or influencing of YSM's administration and its faculty; and

(4) State legislature demanding more from Yale (See, *ECF # 68, pages 14 (XI) thro' 28 (para 3); also See Exhibits # 9 &12, therein; also See, ECF # 64: Exhibits # 4 & 5 therein*).

As has been effectively rebutted before by plaintiff (*see, ECF # 68, pages 29-34*), District Court's concluding statement in its ruling (*ECF # 78, page 27, para 3, lines 5 through' page 28, para 2, line 2*) referring to *Porter v. Morris, 2011 U.S. Dist. LEXIS 78060 *3-4 (D.Conn. July 19, 2011..."(finding that Yale New Haven Hospital is not a "State Actor" for Section 1983 purposes based on its receipt of state funding).*", **has no relevance**, **since** plaintiff is NOT exclusively hinging his "State Actor" claim based on defendant's receipt of state funding, given that his claim is based on a wide ranging and intrinsic involvement of the State of Connecticut, as has been presented in detail in his earlier response in *ECF # 68 (pages 29, para 2 through' page 34, para 1*). **The "State Actor" claim here is expansively also based on:**

(1) **The State of Connecticut's "pervasive entwining"** with the leadership of the Yale University and with its School of Medicine *per se (See, Brentwood Academy v. Tennessee Secondary School Athletic Association, 535 U.S. 971 (2002))*; (*See, 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 (*See, Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961)*); (*See, ECF # 68, pages 14 (XI) thro' 28 (para 3); also See Exhibits # 9 &12, therein; also See, ECF # 64: Exhibits # 4 & 5 therein; also See,* **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)), and thus, 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, per Defendants' own statement (as quoted above) quoting from Huff v. Notre Dame High School, 456 F. Sup. 1145, 1148 (D. Conn. 1978) (Burns, J.)". (See, ECF # 68, Exhibit # 14, therein: page 3, paragraph 3, Huff v. Notre Dame High School, 456 F. Sup. 1145, 1148 (D.Conn.1978)).*

However, in the case of *Porter v. Morris, 2011 U.S. Dist. LEXIS 78060 *3-4 (D.Conn. July 19, 2011)*, as the Judge has additionally alluded to, referring to Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, 102 S. Ct. 2744, 73 L. Ed.2d 482 (1982), that under the second part of the test to determine when the actions of a private party may be attributed to the state so as to make the private party subject to liability under section 1983, the party ....."*or obtained aid from state officials*".., (*See, Exhibit # 15, in ECF # 68, page 1, last paragraph; and page 2, paragraph 1*).

The District Court judge Bolden's extrapolation in Rafi's case (*See, ECF # 65, page 7, paragraph 2*) of Judge Droney's passing statement that, "Yale New Haven Hospital is affiliated with Yale University and Yale University School of Medicine."— meaning it to be a judgment *per se* on the status of Yale School of Medicine "as non-State actors"- **is wrong,** given Judge Droney's clear remark that, "Plaintiff (Porter) alleges no facts to suggest that any defendant satisfies the requirements to be

considered a state actor or is acting pursuant to any right created by the State of Connecticut"(*See, Exhibit # 15, in ECF # 65, page 2, paragraph 2; lines 2 & 3*).

I. UNLIKE IN *PORTER V. MORRIS,* PLAINTIFF, RAFI IN THIS CASE HAS ALLEGED FACTS THAT SUPPORT HIS CLAIM THAT DEFENDANTS IN THIS CASE, YSM AND DR. LIFTON, ARE TO BE CONSIDERED AS STATE ACTORS:

Given that Plaintiff in this case, "does NOT merely hinging on the State as well as Federal financial assistance (XII through XVI- see below) to defendants to stake his claim that YSM and Dr. Lifton, are indeed State Actors", but has indeed irrevocably based his claim on MANY MORE EVIDENCING, as has been extensively presented and argued by plaintiff in his second response at the District Court: *ECF # 68, pages 14 (XI) thro' 34*), which additionally affirm:

1. Direct and intimate State Government's involvements in the very establishment of YSM as well as Yale University (The medical school (YSM) was in fact chartered by an act of the Connecticut State Legislature in 1810 (http://www.columbia.edu/~mdt1/Yalehistory.pdf).
2. State's continued *ex-officiis-* governance up to this time;
3. Direct long-lasting and on-going State Government's engagement and intrinsic collaboration with Yale medical school to enable state-wide delivery of mental health and addictions services;
4. State dictating and/or influencing of YSM's administration and its faculty;
5. State legislature demanding more from Yale; and
6. State of Connecticut ownership of the annual "Connecticut Open" tennis **tournament** at the Connecticut Tennis Center at Yale University—

-----**all** not only in accordance with United States Supreme Court decisions in *Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, 102 S. Ct. 2744, 73 L. Ed.2d 482 (1982), but additionally, satisfying varied requirements in additional United States Supreme Courts' decisions in Brentwood Academy v. Tennessee Secondary School Athletic*

Association, 535 U.S. 971 (2002); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); and Marsh v. Alabama, 326 U.S. 501 (1946), further, in accordance with 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, per Defendants' own statement (as quoted above) quoting from Huff v. Notre Dame High School, 456 F. Sup. 1145, 1148 (D. Conn. 1978) (Burns, J.)". (See, ECF # 68, Exhibit # 14, page 3, paragraph 3, Huff v. Notre Dame High School, 456 F. Sup. 1145, 1148 (D.Conn.1978)).

As emphasized above, the defendants in this case are Yale School of Medicine (YSM) and Dr. Richard Lifton. Since Yale University *per se* has not been named as the defendant in this case, therefore, the most relevant question here is whether YSM *per se* could be considered as a "State Actor" for the purpose of plaintiff's **42 U.S.C.§ 1983** claims in this case.

Given the evidencing and arguments in ECF # 68 (*page 15, para 1, thro' page 23, para 3)*, for:

(1) **The State of Connecticut's "pervasive entwining"** with the leadership of the Yale University and with its School of Medicine *per se (See, Brentwood Academy v. Tennessee Secondary School Athletic Association, 535 U.S. 971 (2002))*; *(See, 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 (*See, Burton v. Wilmington*

Parking Authority, 365 U.S. 715 (1961)); **(***See, ECF # 68, pages 14 (XI) thro' 28 (para 3); also See Exhibits # 9 &12, therein; also See, ECF # 64: Exhibits # 4 & 5 therein; also See,* **http://www.psychiatry.yale.edu);** and

(3) YSM in the service of delivering public health education and health care at the state level, **"a vital public function as an integral part of YSM and its principal senior investigators, such as Dr. Lifton (See,** *Marsh v. Alabama, 326 U.S. 501 (1946))*–it is clear that YSM and Dr. Lifton could be construed as a "State Actors".

The States and their local subdivisions retain the primary responsibility for health under the U.S. Constitution (See, https://www.ncbi.nlm.nih.gov/books/NBK221231/). Connecticut's official activities to protect and promote the public health of its citizens arguably date to 1878, and the Connecticut's Department of Public Health (DPH) is charged with protecting the public health (*CGS § 19a1a et seq.*).

See, https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-1352.htm:

Also See, Exhibit # 13, ECF # 68-1).

II. IT IS CLEAR THAT "[T]HE STATE HAS SO FAR INSINUATED ITSELF INTO A POSITION OF INTERDEPENDENCE WITH THE [PRIVATE PARTY] THAT IT MUST BE RECOGNIZED AS A JOINT PARTICIPANT IN THE CHALLENGED ACTIVITY":

Under the "entwinement test", the alleged private conduct in this case certainly qualifies as "state action". (Stefanoni, 101, F. Supp. 3d. at 179; quoting Hadges v. Yankers Racing Corp., 918, F. 2d 1079, 1089 (2nd Cir. 1990).

Thus, the above evidencing and arguments *(ECF # 68, pages 14 (XI) thro' 28 (para 3); also See Exhibits # 9 &12, therein; also See, ECF # 64: Exhibits # 4 & 5 therein*) **in favor of assigning "State Actor" status to YSM, are in accordance with United States Supreme Courts' decisions in** *Brentwood Academy v. Tennessee Secondary School Athletic Association, 535 U.S. 971 (2002); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); and Marsh v. Alabama, 326 U.S. 501 (1946), as well as in accordance with* the US Supreme Court decisions in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 102 S. Ct. 2744, 73 L. Ed.2d 482 (1982), and *Huff v. Notre Dame High School, 456 F. Sup. 1145, 1148 (D. Conn. 1978) (Burns, J.)". (See, ECF # 68, Exhibit # 14, page 3, paragraph 3, Huff v. Notre Dame High School, 456 F. Sup. 1145, 1148 (D.Conn.1978)).*

The District Court has opted to argue (*ECF # 78, page 28, para 2*), quoting the Supreme Court decision in *Lebron v. Nat'l R. R. Passenger Corp.*, 513, U.S. 374 (1995), **as if "*one size fits all*" for the purpose of establishing that a private institution is sufficiently connected to government actors to convert the entity into a government actor for purposes of Section 1983 liability.** The Court has gone on to conclude that because the amended complaint does not satisfy each prong of the *Lebron* test, and therefore, Yale cannot be considered a state actor.

Therefore, the Supreme Court ought to reassert its rulings in Rafi (plaintiff / appellant / petitioner) case that Yale and Dr. Lifton (*respondents / appellees / respondents*) were acting under the color of the law given Defendants' "*entwinements*" with the State of Connecticut (*Brentwood Acad. V. Tennessee Secondary Sch. Athletic Ass'n,* 531 U.S. 288 (2001), **and the policies of**

Yale School of Medicine (with or without the University *per se*) 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. 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:

The Supreme Court has emphasized that the ultimate question in such cases is whether *"the seemingly private behavior may be fairly treated as that of the State itself"*. See, *Brentwood Acad. V. Tennessee Secondary Sch. Athletic Ass'n,* 531 U.S. 288, 295 (2001) (quoting *Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 351 (1974)).

But the District Court has opted to argue (*ECF # 78, page 28, para 2*), quoting the Supreme Court decision in *Lebron v. Nat'l R. R. Passenger Corp.,* 513, U.S. 374 (1995), as if **"*one size fits all*" for the purpose of establishing that a private institution is sufficiently connected to government actors to convert the entity into a government actor for purposes of Section 1983 liability.**

The Court has gone on to conclude that because the renewed complaint does not satisfy each prong of the *Lebron* test, and therefore, Yale cannot be considered a state actor.

IV. 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).

V. IT IS CERTAINLY NOT "*ONE SIZE FITS ALL*" FOR THE PURPOSE OF ESTABLISHING THAT A PRIVATE INSTITUTION IS SUFFICIENTLY CONNECTED TO GOVERNMENT ACTORS TO CONVERT THE ENTITY INTO A GOVERNMENT ACTOR FOR PURPOSES OF SECTION 1983 LIABILITY:

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).

VI. "[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).

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).

VII. RAFI (*PRO SE PLAINTIFF / APPELLANT / PETITIONER*) IN THIS CASE HAS EXTENSIVELY EXHIBITED AND ARGUED (*SEE, ECF # 68, PAGES 14-34*) THAT DEFENDANT / APPELLEE / RESPONDENTS: YALE SCHOOL OF MEDICINE (YSM) AND DR. LIFTON, WITH OR WITHOUT YALE UNIVERSITY PROPER, QUALIFIES AS A "STATE ACTOR":

Given:

Yale was originally chartered by the colonial legislature of Connecticut as the Collegiate School (See, https://www.britannica.com/topic/Yale-University).

I. In 1810 the Connecticut (State) General Assembly established the medical institution of Yale College, giving Yale University and the Connecticut Medical Society shared jurisdiction over the training of physicians.

III. In fact, the Original Yale School of Medicine building was purchased with a grant by the Connecticut State Legislature

See:

https://commons.wikimedia.org/wiki/File%3AOriginalYale_School_of_Medicine_building_Grove_Street_New_Haven_Connecticut.jpg).

IV. During 1833, the State Hospital, precursor to the New Haven Hospital, was established, and during 1884, the hospital's name was changed to New Haven Hospital (*See, Exhibit # 4; ECF # 63*). In fact, the original hospital building was named "State Hospital", and only in 1884, the hospital's name was changed to "New Haven Hospital" to reflect the name that was widely being used by the residents of New Haven (*See, Exhibit # 5; ECF # 63*).

V. The term, "Yale College" was changed to Yale University in 1887, and the name of the medical school automatically changed, too. The current name, Yale School of Medicine was adapted (by the State Legislature) in 1918 *(Exhibit # 4; ECF # 63).*

VI. It is important to note that the ties between Yale School of Medicine and the State of Connecticut were never ever severed, and the State remains *"intrinsically*

involved" up to this time, and the State is also *"intrinsically involved"* in the overall governance of the University at the highest level up to this time.

VII. Yale University's By-Laws, as approved by the Yale Corporation, dated December 5, 2015, affirms that Yale's Governing Body, known legally as "The President and Fellows of Yale College"—or, more simply, as "The Corporation", "comprises of the Governor of State of Connecticut *(ex-officiis)*, the Lieutenant Governor of the State of Connecticut *(ex-officiis)*, along with the President of Yale University (*see ECF # 64: Exhibit # 5—Annex:* https://www.yale.edu/about-yale/president-*leadership/governance-historic-documents/yale-corporation-laws*).

VIII. In 1792, by act of the General Assembly of the State of Connecticut, the ten Successor Trustees were joined by eight Trustees *ex-officiis*: The Governor and Lieutenant Governor, and "six senior assistants in the Council of this State." In 1819 the six senior assistants were replaced by the six senior State Senators. The attendance of the Senators at Corporation meetings was, however, perfunctory and unreliable. In 1871, therefore, the State Legislature agreed to divest them of their membership and granted the Yale alumni the right to elect, instead, six of their own member...(*see ECF # 64: Exhibit # 5—Annex: https://www.yale.edu/about-yale/president-leadership/governance-historic-documents/yale-corporation-laws*).

VIII. THUS, YALE SCHOOL OF MEDICINE AND YALE UNIVERSITY ARE IN FACT "CO-SPONSORED AND CO-GOVERNED BY THE STATE OF CONNECTICUT UP TO THIS TIME"

IX. **In addition to the above *ex-officiis* governance of Yale Corporation by the Governor and the Lieutenant Governor of the State of Connecticut, Plaintiff has evidenced** *(See ECF # 62-1: p. 33, and Exhibit # 3)*, **that the Connecticut Mental Health Center (CMHC) is in fact a direct State Government's engagement and collaboration with Yale medical school (YSM), to enable state-wide delivery of mental health and addictions services to uninsured and underinsured people, a collaboration in public service.**

The Connecticut Mental Health Center celebrated its 50th anniversary in 2016, was founded in 1966, and is one of the oldest community mental health centers in the United States. An enduring direct collaboration between the State of Connecticut Department of Mental Health & Addiction Services and the Yale School of Medicine's Department of Psychiatry, and the Connecticut Mental Health Center provides recovery-oriented mental health services for 5,000 people in the Greater New Haven area each year.

The Connecticut Mental Health Center also serves as a center for scientific advancement in the understanding and treatment of mental health and substance abuse disorders. (*See, Exhibit # 9:* https://medicine.yale.edu/psychiatry/care/cmhc/).

Further, the Connecticut Mental Health Center is one of three major institutions of Yale Medical School's Department of Psychiatry along with the United States Department of Veterans Affairs- Connecticut Healthcare System, and the Yale-New Haven Psychiatric Hospital (*See, Exhibit # 9, herewith;* http://www.psychiatry.yale.edu).

X. Further, the Connecticut State General Assembly passes legislations dictating or influencing the administration of Yale School of Medicine and its faculty, as well as controlling Yale School of Medicine's services (*Yale medical group*), teaching, conduct of research, and its finances, given Yale University's State tax free status:

See Exhibit # 10, herewith: http://news.yale.edu/2016/03/15/yale-s-taheri-cautions-against-potential-negative-consequences-state-legislative-proposal; also See, http://fortune.com/2016/03/24/yale-endowment-connecticut/.

Additionally, State of Connecticut Senate President recently acted to influence Yale Medicine, which includes more than 1,400 clinical faculty at the Yale School of Medicine, demanding contract agreement with another health care provider (See, http://www.nhregister.com/health/20160929/connecticut-senate-president-pushes-for-anthem-yale-medicine-contract-agreement&template=printart; also See, *See, Exhibit # 10, herewith*). Further, State lawmakers sought more from Yale: Two Democratic leaders in the General Assembly made a case Tuesday for Yale University to invest part of the annual increase in its endowment in local job growth and educational opportunities or write the state a check for $78 million. The State law makers pointed out that "not all private universities are in fact private universities," since the tax subsidies that they receive exceed anything received by public colleges and universities, estimating that the per student taxpayer subsidy at Yale to be 3 times that of the University of Connecticut (*See, Exhibit # 11, herewith*: also see, page 1, paragraphs 7 & 8 at: *http://www.pressreader.com/usa/new-haven-register-new-haven-ct/20160323/281496455409137 (also See, Exhibits # 10 & 11).*

XI. The State of Connecticut is so pervasively and integrally intertwined with Yale School of Medicine and Yale University, even the annual "Connecticut Open" tennis tournament at the Connecticut Tennis Center at Yale in New Haven, CT is owned by the State of Connecticut: See, http://www.ctopen.org/tournamentinformation/).

ALL THE ABOVE, ITEMS, # I THROUGH # XI- EVIDENCING—AFFIRM:

THAT THE DEFENDANT-APPELLEE IN THIS CASE, YALE SCHOOL OF MEDICINE AS A "STATE ACTOR", IN ACCORDANCE WITH UNITED STATES SUPREME COURT

DECISIONS IN *BRENTWOOD ACADEMY V. TENNESSEE SECONDARY SCHOOL ATHLETIC ASSOCIATION,* *535 U.S. 971 (2002)*; *BURTON V. WILMINGTON PARKING AUTHORITY, 365 U.S. 715 (1961)*; *AND MARSH V. ALABAMA, 326 U.S. 501 (1946).*

XII. PLAINTIFF HAS GONE FURTHER TO ADDITIVELY EVIDENCE THAT YALE SCHOOL OF MEDICINE RECEIVES CONSIDERABLY LARGE AMOUNTS OF FINANCIAL ASSISTANCE FROM THE STATE OF CONNECTICUT *PER SE*, AS WELL AS FROM THE FEDERAL GOVERNMENT: *See, District Court ECF # 62-1, Exhibits 1 to 2),* **as indicated below in items, # XII through # XVI:**

XIII. Yale Medical School (along with the University) was tax exempted by the State of Connecticut to a tune of $2.5 billion according to the 2013 grand list *(See ECF # 62-1, Exhibit # 1)*;

XIV. The tax subsidies (*tax-free status*) that Yale receives from the State of Connecticut are far greater (*3-10 times more!*) than the so-called public colleges and universities receive in the State of Connecticut, according to *the Nexus Research & Policy Center.* Under a 182-year-old State Law, academic property of Yale is exempt from State taxes (*See, Exhibit # 11, herewith:* http://nexusresearch.org/wpcontent/ uploads/2015/06/ Rich_Schools_Poor_Students.pdf);

XV. The Connecticut Stem Cell Research Grants-in-Aid Program to Yale School of Medicine was established by the Connecticut General Assembly in June 2005 when it passed Connecticut General Statutes §19a-32d through §19a-32g. These stem cell research grants are part of the $100 million Stem Cell Research Fund which was created by legislation that signed by the Governor of the State of Connecticut into law in 2005 making Connecticut just the third state in the nation to offer public funding for human stem cell research. The Connecticut Stem Cell Research Advisory Committee is chaired by Connecticut State's Public Health Commissioner. For the

number of these Connecticut State's stem cell research grants that were awarded to Yale School of Medicine specifically each year, starting from 2006, see *Exhibit # 12*, herewith; also See, ECF # 62-1, Exhibit # 2.

XVI. **The sum of federal government grants given to Yale during 2014 alone was $507.1 million or 75.3 percent of all Yale's grant and contract income in 2015:** See, http://yaledailynews.com/blog/2015/11/03/med-school-income-soars-as-federal-funding-falters/); and thus,

XVII. **Yale School of Medicine ranking sixth among medical schools receiving Federal Government funds from the National Institutes of Health (NIH), and second in NIH dollars per faculty member (http://medicine.yale.edu/facts/).**

ALL OF THE ABOVE ITEMS # I THROUGH # XVII– EVIDENCING OF FACTS AND FIGURES, COLLECTIVELY UNASSAILABLY AFFIRM THAT:

YALE SCHOOL OF MEDICINE *PER SE*, WITH OR WITHOUT THE YALE UNIVERSITY PROPER, CERTAINLY QUALIFY AS A "STATE ACTOR"– FOR THE PURPOSE OF PLAINTIFF'S CLAIMS UNDER 42 U.S. C. § 1983, AND IN THE SAME LIGHT, THE ALLEGED ILLEGAL ACTIONS OF DR. RICHARD LIFTON *(TENURED AND ENDOWED PROFESSOR AND CHAIRMAN OF THE GENETICS DEPARTMENT AT YALE SCHOOL OF MEDICINE AND YALE UNIVERSITY!)* ARE TO BE CONSTRUED AS "STATE ACTIONS"– FOR THE PURPOSE OF PLAINTIFF'S CLAIMS UNDER 42 U.S. C. § 1983.

It is indeed naïve to argue that the receipt of hundreds of millions of dollars of federal research grants annually by Yale School of Medicine as a whole, as well as by Dr. Lifton, is akin to *a private school for children with*

***special needs received public tuition funds with related government regulations, as in* the case of Rendell-Baker v. Kohn, 457 U.S. 830 (1982).**

Notwithstanding the above huge federal government grants, **YSM also receives:**

(1) Funding for research from the State of Connecticut;
(2) Huge state government tax-subsidies which are 3-10 times that of the so-called public colleges and Universities receive in the State of Connecticut;
(3) State tax exemptions to a tune of 2.5 billion to YSM and Yale University;
(4) Connecticut State Assembly advances state research priorities in the field of stem cell research through Grants-in-Aid public funds programs at YSM;
(5) The stem cell research advisory committee being chaired by Connecticut State Public Health Commissioner;
(6) Connecticut State Government having established YSM *per se* in 1810, as well as Yale University;
(7) State's continued *ex-officiis*- governance up to this time;
(8) Direct long-lasting and on-going State Government's engagement and collaboration with Yale University (YU) and its medical school to enable state-wide delivery of mental health and addictions services;
(9) State dictating and/or influencing of YSM's administration and its faculty;
(10) State legislature demanding more from Yale; and
(11) State of Connecticut ownership of the annual "Connecticut Open" tennis tournament at the Connecticut Tennis Center at Yale University---

---are altogether indeed more than sufficient enough to transform YSM into a "State Actor" for the purpose of Section 1983 liability, NOT ONLY in accordance with United States Supreme Court decisions in *Brentwood Academy v. Tennessee Secondary School Athletic Association,* *535 U.S. 971 (2002)*; *Burton v. Wilmington Parking Authority,* *365 U.S. 715 (1961)*; *and Marsh v. Alabama,* *326 U.S. 501 (1946), BUT ALSO IN ACCORDANCE WITH 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, as indicated in Huff v. Notre Dame High School, *456 F. Sup. 1145, 1148 (D.Conn.1978).*

See, *ECF # 68, page 19, para 2, thro' page 34*;
also See, *Renewed Complaint, pages 30 through' 33, items 2.2 through' 2.5.*

XVIII. 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:

XIX. ***"IF ONE CRITERION IS SATISFIED, THE REQUIREMENT CAN BE MET".***

Wherefore, the Supreme Court ought to reassert its above rulings in Rafi's case as well finding that Yale and Dr. Lifton (*respondents / appellees*) were acting as "State Actors and/or 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 the policies of Yale School of Medicine** (with or without the University *per se*) **are so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action."** 382 U.S. at 299).

QUESTION 4

4. Did the District Court "Blunder" by Determining That Title VI Claims Cannot Be Asserted Against Dr. Lifton, "As Title VI Is Only Applicable to Programs Receiving Federal Assistance" *(District Court ECF # 78, Page 7, Para 3)*– **which the Circuit Court failed to address?**

QUESTION 4- ARGUMENTS:

Petitioner, Dr. Rafi asserts that along with Yale School of Medicine, Dr. Lifton is certainly responsible for assuring compliance with applicable federal laws and statues pertaining to the utilization of federal government funds that were allocated to him based on his research proposals, as the Principal Investigator as well as senior investigator of multitudes of federally funded research projects to him.

In a recent case involving abuse of federal government research grants at the Northwestern University by another similar federal grants recipient (Principal Investigator) scientist, Dr. Bennett (See, *United States, et al., ex rel. Melissa Theis v. Northwestern University, Dr. Charles L. Bennett, et al.,* No. 09 C 1943 (N.D. Ill., 2009)). In this case, it is alleged that the defendants (*Northwestern University and Dr. Bennett)* submitted false claims to the United States when the Principal Investigator (Dr. Bennett) directed and authorized the spending of grant funds on goods and services that did not meet applicable NIH and government grant guidelines.

The allegations were investigated by the U.S. Department of Health and Human Services Office of Inspector General, the Federal Bureau of Investigation, the National Institutes of Health, and the U.S. Attorney's Office. The government

contends that it has certain civil claims against Northwestern arising out of Northwestern's improper submission of claims to NIH for grant expenditures for items that were for the personal benefit of the Principal Investigator of the grant money (Dr. Bennett). Although the University settled the case by paying nearly $ 3 million, the government (US Department of Justice) ALSO pursued the case against the Principal Investigator, Dr. Bennett (*who is also a physician scientist just like Dr. Lifton!*), and reached a settlement agreement, wherein, Dr. Bennett shall pay to the United States.:

> See, Settlement Agreement - Department of Justice, at http://www.justice.gov/sites/default/files/usao-ndil/legacy/2015/06/11/pr1030_01a_0.pdf; Former **Northwestern** Physician To Pay The **United States;** https://www.justice.gov/usao-ndil/pr/former-northwestern-physician-pay-united-states-475000-settle-cancer-research).

I. THIS CASE CERTAINLY ESTABLISHES THE FACT THAT PRINCIPAL INVESTIGATORS AND SUPERVISORS OF THE FEDERAL RESEARCH FUNDS RECIPIENTS ARE ALSO HELD ACCOUNTABLE BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF INSPECTOR GENERAL, THE FEDERAL BUREAU OF INVESTIGATION, THE NATIONAL INSTITUTES OF HEALTH, AND THE U.S. ATTORNEY'S OFFICE.

Therefore, given that the alleged retaliatory violations by federal government funds recipients (*Yale School of Medicine as well as Dr. Lifton)* which are as such actionable under Title VI, can also be actioned as such under Section 1983 for the federal funds-recipients' violation of petitioner's constitutional provisions under the Fourteenth Amendment.

II. TO ENFORCE TITLE VI-SECTION 602 REGULATIONS: *PETITIONER COULD SUE Dr. LIFTON UNDER § 1983 TO ENFORCE THE SAME TITLE VI REGULATIONS:*

The alleged conspiracy and the consequent on-going coercion, intentional discriminatory and retaliatory violations and reprisals by Federal government funds recipient respondents is actionable as such under Title VI, and it can also be actioned under Section 1983 for the recipients' violation of petitioner's Constitutional provisions under Title VI.

(See, **"Using § 1983 to Enforce Title VI's Section 602 Regulations".** Bradford C. Mank. *Kansas Law Review, Vol. 49, p. 321, 2001; U of Cincinnati Public Law Research Paper No. 10-21,* Last revised: 27 Apr 2010; https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1265&context=fac_pubs).

III. THE SUPREME COURT OUGHT TO ASSERT THAT TITLE VI CLAIMS CAN BE ASSERTED AGAINST DR. LIFTON AS WELL UNDER THE CIVIL RIGHTS ACT AMENDMENTS [42 U.S.C. 2060D-4A], SEC. 606.

The Supreme Court began accepting an expansive definition of rights, privileges, or immunities and held that the act does cover the actions of state and municipal officials, even if they had no authority under state statute to act as they did in violating someone's federal rights.

To prevail in a claim under section 1983, the plaintiff must prove two critical points, as plaintiff has extensively established in this litigation:

(1) A person subjected the plaintiff to conduct **that occurred under a federal law,** or **under color of state law;** and

(2) **This conduct deprived the plaintiff of rights, privileges, or immunities guaranteed under federal law** or **the U.S. Constitution.**

Wherefore, the Supreme Court ought to correct lower Courts' "blunder" that federal funds receiving principal investigators such as dr. Lifton could NOT be sued under § 1983 to enforce the same Title VI regulations.

CONCLUSION

Given the above four novel and pivotal questions in this petition, and the relevant extensive arguments and sound legal theories thereof, that are often based on this Supreme Court's assertions, as has been quoted and argued above for each of the questions raised in this petition, the Supreme Court ought to consider this petition for Writ of Certiorari, in the interest justice.

***WHEREFORE*, Given All the Above Crucial Assertions That Impact Application of Statutory Laws and Clauses of The Constitution, *Pro Se* Petitioner Respectfully Requests to Grant This Petition for *Writ of Certiorari* to Uphold Rule of Law and Justice for All, Not Excluding Naturalized Citizens, Such as The Petitioner.**

Respectfully submitted.

Syed K. Rafi, PhD.
Pro Se Petitioner

September 14, 2018

"Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe".

Frederick Douglass