No. 18-____

In the Supreme Court of the United States

JAMES H. BRADY,

Petitioner,

v.

THE STATE OF NEW YORK; THE NEW YORK COMMISSION ON JUDICIAL CONDUCT; THE NEW YORK STATE ATTORNEY GENERAL'S OFFICE; AND THE OFFICE OF GOVERNOR ANDREW CUOMO,

Respondents.

JAMES H. BRADY,

Petitioner,

v.

THE NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE AND THE CITY OF NEW YORK,

Respondents.

On Petition for Writ of Certiorari to the New York Court of Appeals

PETITION FOR WRIT OF CERTIORARI

JAMES H. BRADY
PETITIONER PRO SE
510 SICOMAC AVENUE
WYCKOFF, NJ 07481
(201) 923-5511
BRADYNY@GMAIL.COM

NOVEMBER 28, 2018

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. As the New York State Attorney General and Manhattan District Attorney were not acting as advocates for the people when they permitted Petitioner's contractual property rights to be rewritten and voided under color of law, did the Appellate Division, First Department err in finding Respondents immune pursuant to *Imbler v. Pachtman*, 424 U.S. 409 (1976)?

2. Has the New York State Courts' misapplication of *Imbler* resulted in the obstruction of justice and violations of Petitioner's and New York State citizens' Fifth and Fourteenth Amendments rights?

3. Does the Appellate Division, First Department's February 8, 2018 Decision conflict with the case cited, *Moore v. Dormin*, 252 AD 2d 421 (1st Dept. 1998), which held that "not all discretionary actions are absolutely immune"?

4. Is it unconstitutional for the New York State Courts to force the victim of an unlawful act to pay the litigation fees incurred by the Manhattan District Attorney and the New York State Attorney General?

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

CONSTITUTIONAL PROVISIONS

STATUTES

OPINIONS BELOW

The instant appeal arises from the New York State Supreme Court, Appellate Division, First Department, Joint Decision, dated February 8, 2018, in *James H. Brady v. The New York County District Attorney's Office and the City of New York*; Index No. 154496/2015, and *James H. Brady v. The New York State Attorney General's Office, The New York Commission on Judicial Conduct, The Office of Governor Andrew Cuomo, and The State of New York*, Claim No. 126268.

New York State Court of Appeals denied leave to appeal the respective appeals June 12, 2018. Reargument to the New York State Court of Appeals was denied on August 30, 2018.

The New York Supreme Court Appellate Division, First Department issued a Joint Decision and Order on February 8, 2018, in these cases denying Petitioner's respective appeals and *sua sponte* ordered that plaintiff-appellant pay the litigation fees of all defendants.

In the underlying actions Petitioner filed a Complaint against the District Attorney, et al. in the New York County Supreme Court on May 5, 2015, before Justice Margaret Chan against the for 1) gross negligence; 2) willful misconduct; 3) prima facie tort; 4) negligent infliction of emotional distress; and 5) violation of the Equal Protection Clause. Decision and Order of the Supreme Court of New York (November 23, 2015). The cases were dismissed in pre-answer motions to dismiss based on " absolute immunity" citing *Imbler v. Parchtman*. The Court then *sua sponte*

issued a filing injunction preventing plaintiff-appellant from initiating any type of lawsuit in New York without first obtaining "approval from the Administrative Judge of the court in which he seeks to bring a further motion or commence an action."

Petitioner also filed a Complaint in the New York Court of Claims on June 9, 2015, before Hon. Judge Thomas Scuccimarra against the Attorney General, Governor Cuomo and the State of New York sought compensatory relief for 1) gross negligence; 2) willful misconduct; 3) prima facie tort; 4) negligent infliction of emotional distress, and 5) violation of the Equal Protection Clause of the Fourteenth Amendment. Decision and Order of the State of New York Court of Claims (October 23, 2015). The case was dismissed in pre-answer motions to dismiss based on 'judicial immunity'.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or

claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS

- **U.S. Const. amend. V**

  No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any unlawful case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- **U.S. Const. amend. XIV, § 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 deprive 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.

- 42 U.S.C. § 1983

  Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. The Rewriting of Petitioner's Offering Plan Contract Is an unlawful Act Which Respondents Failed to Investigate

Petitioner James H. Brady respectfully prays that writ of certiorari issue to review of a joint decision by the New York State Supreme Court Appellate Division, First Department on February 8, 2018 (appeal "denied" by the New York State Court of Appeals without

explanation on June 12, 2018, reargument denied August 30, 2018).

It is undisputed in the decision that Petitioner is the victim of an unlawful act under color of law. Petitioner is the former owner of a New York co-operative apartment at 450 West 31st Street Owners Corp. and had the Offering Plan contract, which had been ruled unambiguous, rewritten by the courts of New York State in order to steal under color of law the $70-90 million dollars' worth of development rights that were contractually appurtenant to Petitioner's 12th Floor and Roof Unit apartment pursuant to the Seventh Paragraph Footnote to the Schedule of Units of the Amended 1980 Offering Plan.

Petitioner was further unlawfully sanctioned $400,000 by the Supreme Court, Commercial Division, for attempting to exercise his constitutional right to seek redress from the responsible parties.

This unlawful act could not and would not have taken place had Respondents New York Attorney General and the Manhattan District Attorney protected Plaintiff by performing their mandated duties, procedures and protocols of their respective offices and investigated Plaintiff's numerous letter and details of the unlawful act. Respondents' court papers and motions to dismiss show Petitioner was treated as an adversary rather than the victim of an unlawful act, and that Respondents did not investigate the unlawful act detailed in Petitioner's voluminous letters and reports to Respondents. DANY and NYAG admit they refused to ever even meet with him.

No one denies an unlawful act took place under color of law. No one denies that the description of Petitioner's co-operative apartment was unlawfully rewritten to void what the contract and higher Appellate Division said on their face. Yet, no "decision" was ever issued by either NYAG or DANY to protect the victim of this unlawful act or to prosecute its perpetrators.

Specifically, Petitioner is appealing the joint decision by the New York State Supreme Court, Appellate Division, First Department, February 8, 2018, which held in relevant part:

> In these actions, plaintiff/claimant, acting pro se, asserts claims under 42 U.S.C. § 1983 and state law alleging that defendants' refusal to investigate his allegations of judicial corruption constitutes gross negligence, willful misconduct, prima facie tort, negligent infliction of emotional distress, and a violation of the equal protection clause. To the extent any of these defendants can be sued at all, they are protected by absolute prosecutorial immunity, which applies to the decision whether or not to initiate a prosecution (see *Imbler v. Pachtman*, 424 U.S. 409, 431 [1976]), as well to the investigative and administrative acts that are intertwined with this decision, such 16 as the decision not to investigate a complaint (*see Moore v. Dormin*, 252 A.D.2d 421 [1st Dept 1998, Rosenberger, J., concurring], lv denied 92 N.Y.2d 816 [1998]).

This Court established in *Imbler v. Pachtman*, 424 U.S. 409 (1976) that a prosecutor or government-

administrative official is not entitled to absolute immunity unless they are performing advocative conduct—"those aspects of the prosecutor's responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate." (*Id.* 421).

Imbler v. Pachtman, 424 U.S. 409 (1976) further establishes that immunity is dependent on Defendants having made a "decision" in Plaintiff's reporting of an unlawful act to them. Specifically, *Imbler* requires Defendants to have prepared a "decision" (whether right or wrong).

The Law Dictionary defined a "decision" as "a judgment, decree, or determination of findings of fact and/or law by a judge, arbitrator, a court, a governmental agency, or any other official tribunal."

This is precisely what Defendants failed to do, reach a decision in Plaintiff's case, they failed to investigate his reports and letters to them, and, as shown in the archival video of a January 17, 2018 hearing before he Appellate Division discussed below, they then justified their conduct in court by asserting complete immunity, never disputing that they failed to investigate Plaintiff's claims.

This Court affirmed the functional approach to immunities cases *Kalina v. Fletcher*, 522 U.S. 118 (1997), holding that "the nature of the function performed, not the identity of the actor who performed it" is what establishes whether immunity applies.

Moore v. Dormin, 252 AD 2d 421 (1st Dept. 1998), cited by the Appellate Division, First Department in its February 8, 2018 decision, holds that:

> Not all discretionary actions, though, are absolutely immune (*Arteaga v. State of New York*, *supra*, at 216, 532 N.Y.S.2d 57, 527 N.E.2d 1194). Our courts take a functional approach to the issue. We have long provided the prosecutor, as a quasi-judicial officer, with immunity from civil suits only for official acts performed in the investigation and prosecution of unlawful charges (*Rodrigues*, *supra*, at 87, 602 N.Y.S.2d 337; *Schanbarger v. Kellogg*, 35 A.D.2d 902).

Refusing to investigate is not a discretionary.

The New York Supreme Court Appellate Division, First Department erred further in misapplying or ignoring New York State Law precedent on the absence of immunity for state government officials who engage in "per se arbitrary conduct" in carrying out their administrative duties, specifically in relation to the preparation of a report leading to a decision as part of an investigation. *CRP/Extell Parcel I v. Andrew Cuomo*, NY Slip Op 50073(U), January 19, 2012, Supreme Court, New York County show that the Attorney General's internal procedures were not followed in Plaintiff's case and Defendants have not given any reason, making their conduct arbitrary pursuant to law.

The imposition of sanctions against Plaintiff was a violation of both New York Law 22 N.Y.C.R.R. § 130-1.1, and of his constitutional right to Due Process, as he was sanctioned to pay the "legal fees" of then New York Attorney General Eric Schneiderman and Manhattan District Attorney Cyrus Vance.

The *sua sponte* filing injunction against Plaintiff imposed by Manhattan Supreme Court Justice

Margaret Chan in a November 23, 2015 decision is also unconstitutional and a violation of Plaintiff's Fifth and Fourteenth Amendments, and a clear obstruction of his right to Due Process. This filing injunction was never addressed by the Appellate Division decision, which is a violation of Petitioner's right to an appeal on the merits. The New York State Courts have effectively attempted to prevent and then bar Petitioner from seeking redress. Petitioner now comes before this Court.

B. Respondents Refused to Act as an Advocate for the People When They Permitted Petitioners Contract to Be Unlawfully Rewritten Under Color of Law.

The scheme which Defendant ignored after having been told repeatedly the details was the rewriting of Plaintiff's contract by Justice Shirley Kornreich after real estate developers were unable to obtain a Waiver from Plaintiff in 2012.

Plaintiff had gone to court to enforce a February 11, 2010 Appellate Division, First Department decision against the developers and co-operative Board who executed a transaction they all agreed required a Waiver from Plaintiff, which is why they asked him and his wife to sign a Waiver in 2012.

The Seventh Paragraph Footnote to the Schedule of Units in the Amended 1980 Offering Plan from *450 West 31st Street Owners Corp* reads as follows:

> "Seventh Paragraph-NEW-The 12th Floor and Roof Unit Shall have, in addition to the utilization of the roof, the right to construct or extend structures on the roof or above the

> same, to the extent that may from time to time be permitted under applicable law."

The Appellate Division, First Department, February 11, 2010 Decision ended with the following words:

> "Pursuant to paragraph 7, that plaintiffs have the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law, unanimously affirmed, without costs."

Justice Kornreich's Supreme Court July 15, 2014 Decision rewrites the above to read:

> "It has already been adjudged that while the owners of the unit may have the right to erect additional structures on the roof, that right does not entitle them to use any floor area in doing so (Prior Action, decision and order, Mar 13, 2009 at *2 & *4-*5 ["Nothing herein shall be construed as holding that plaintiffs have the right to use all or any part of the Tars in connection with such construction or extension"] *Brady v. 450 W. 31st St. Owner's Corp.*, 70 A.D.3d 469, 470 [1st Dept 2010] [holding that the offering plan "reserves for plaintiffs the right. . . . to construct or extend structures on the roof that may be built without the use of the building's development rights."]"

Every word from the Offering Plan Contract and a higher court determination was taken out and replaced by Judge Kornreich. Under the Appellate

Division decision, PETITIONER has the right to the utilization of the premise's $70-90 million in development rights. Under Judge Kornreich's rewording, Petitioner is left with nothing at all.

New York State law is very clear that an unambiguous contract cannot be rewritten by the courts:

> "When parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms." *W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 157, 162 [1990]. And "Courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing." "In the absence of any ambiguity, we look solely to the language used by the parties to discern the contract's meaning." *Vermont Teddy Bear v. 538 Madison Realty Co.*, 308 A.D.2d 33 (2004).

In the August 9, 2018 Decision in the case of *Craig B. Massey v. Christopher V Brian, et al.*, the Justices of the First Department made clear the law that the rewriting of a contract by a lower court was unlawful.

> "An appellate court's resolution of an issue on a prior appeal constitutes the law of the case and is binding on the Supreme Court as well as on the appellate court . . . [and] operates to foreclose re-examination of the question absent a showing of subsequent evidence or change of law"

107 A.D.3d 544 [1st Dept 2013].

The case law is clear that 1) No court is permitted to rewrite a contract to void what the contract says on its face, and 2) The case law makes clear a lower Court cannot rewrite a higher appellate Court Decision but that is exactly what happened to Petitioner and no one is taking any action to protect Petitioner from these unlawful acts.

1. The Parties to the Contract Had Always Agreed to Its Meaning

That the Offering Plan contract was a conveyance for the utilization of the premise's development rights was perfectly understood by the parties to the contract. Franklin Snitow, Extell's litigation counsel, stated in his "Affirmation for Defendants Extell Dev. Corp.", et al., March 18, 2008, p. 2 ¶ 3 (Index 1.):

> The intent is evidenced in the decision of the original owner of the 12th floor unit to build an 1,800 square foot penthouse on the roof." Thus, the intent of the Amendment is clear on its face." (R: 310).

Similarly, Stanley Kaufman, litigation attorney for the Co-op, stated in "Defendant's Reply Memorandum of Law," April 14, 2008, p.5,

> The clear intent was to grant the 12th floor unit owner some latitude in adding additional space, or structures, so long as in doing so, the owner did not violate the local building code, zoning regulations, or other ordinances.
>
> And further:

> The clear and logical meaning of the added footnote number 7 of the Second Amendment was to grant 12th floor owner some latitude in adding additional structures, so long as in doing so, the owner did not endanger anyone else's health or safety or violate the building Code, zoning laws or any other laws or ordinances." (*Ibid.* p. 28).

Stanley Kaufman, wrote in his "Affirmation in Opposition to Plaintiff's Motion for Reargument":

> In the early 1980's, the sponsor's principal, Arthur Green, who at the time occupied the 12th floor, constructed a penthouse addition (an addition what was completely illegal at the time, but legalized years later by the co-op [R 759]). In fact, the Bradys alleged in their Amended Complaint that at a time when the Building had no available development rights, Arthur Green "exercised the rights of the 12th floor to build by constructing a 1,800 square foot penthouse on the roof . . . " (R67 at par. 23, 24). As evidenced by the sponsor's own conduct, paragraph 7 of the Second Amendment was probably designed to give the then owner of the 12th floor (which happened to be the sponsor's principal) the right to build additional space for himself, which he did; not to give the owner of the 12th floor unit the benefit of receiving enormously valuable development rights resulting many years later from some then completely unforeseeable future rezoning.

2. Joseph Augustine, Attorney for the Co-op, Also Agreed the Contract Gave Petitioner the Right to Utilize the Premise's Development Rights at the March 18, 2014 Oral Arguments

THE COURT: —which means you're going to have to commit the coop board to tell me: What does Paragraph 7 mean?

MR. AUGUSTINE: It means he has the right to build structures once he submits a plan. And if those structures are permissible by law, such as Department of Buildings, and those plans do not pose a structural risk or any other risk to the building in order to—for him to service the space that he has there, then the board would be inclined to approve it.

THE COURT: But what I'm saying is he does have that right, though, under paragraph 7.

MR. AUGUSTINE: He has—our understanding he has a right to build structures. That's what it says. No one disagrees. The courts all said the same thing, he has a right to build structures.

C. The Imposition of Sanctions Against Plaintiff Was a Violation of New York State Law and the U.S. Constitution

After Plaintiff's contract was rewritten, Judge Kornreich sanctioned him $500,000 in attorney's fees. The imposition of sanctions violated not only New York Law 22 N.Y.C.R.R. § 130-1.1, but was also of his

Due Process Rights under the Fifth Amendment to the U.S. Constitution.

Justice Kornreich herself makes it clear why sanctions were unwarranted and unlawful in this case based on the admissions she makes at the March 18, 2014 Oral Arguments, during which Justice Kornreich made the following admissions:

> THE COURT: How would you deal with the decision of the Court and say he has no development rights, he has no air rights, yet he has the right to build? What does that mean? (Transcript p. 9:17-20).
>
> THE COURT: The courts said that he has no air rights, but he has the right. But I think, perhaps, the courts didn't understand that air rights, FAR, all of that is probably the same things, development rights, so— (Transcript p.12:9-13).
>
> THE COURT: I don't know what you said. Nor do I know what the Court said. (Transcript p. 14:12-13)
>
> THE COURT: The decisions don't—don't address this, because, at least in this Court's mind, I don't *see* how you can build and build up without going into air rights or—you know, so I don't understand the decisions. I'm asking you for guidance. (Transcript p. 17:18-22).
>
> THE COURT: <u>And the Appellate Division and lower court doesn't say, "You can only build to a certain height," they said "Yeah, he has the right to build up and out but he can't</u>

use the air rights," which is really an enigma. (Transcript, p. 27:3-29:3).

THE COURT: I don't understand how you can build a structure on a roof if you have no air rights. (Transcript p. 28:4-5).

Mr. BRADY: So the correct reading it's an inconsistent decision. Please square the two, Your Honor. Square—

THE COURT: I don't know how. (Transcript p. 53:17-19).

THE COURT: —it was the sponsor who put this in, it was the sponsor who owned the penthouse and roof. Perhaps that was his intent. However, I can't rule that way because the Supreme Court already ruled and the Appellate Division already ruled that you do not own those air rights. (Tr. p. 54:11-20).

In the July 15, 2014 decision, Justice Kornreich made the following acknowledgments regarding Plaintiff's claims that prove that sanctions were unlawfully imposed given the Court's own decision:

"Strictly speaking, Brady is correct that the question of whether such an easement interferes with his right to build structures on the roof or otherwise permitted by applicable law has never been determined and so is not barred." (July 15, 2014 decision, p.15).

"Brady correctly notes that the issue of whether the sale to Extell violated his rights was never reached, and that the issue of whether the sale of the air rights by 450

> Owners Corp. to Sherwood violated Brady's rights could not have been reached in the prior actions." (July 15, 2014 decision, p.19).

Yet notwithstanding all of those admissions, in the July 15, 2014 decision, Justice Kornreich completely departed from all of her admissions and from her clear understanding of the case, and instead stated that Plaintiff's claims were frivolous and meritless, and imposed over $400,000 of sanctions:

> "It is clear from the papers and the transaction's history that Brady acted in bad faith in bringing the instant cases."
>
> "His misinterpretation of prior judgment, his feigned ignorance or the origin or the meaning of the phrase "transferable development rights," and his argument that a decision, which he appealed to no avail, is not binding are but a few examples of the frivolous arguments made in the instant actions."
>
> "In short, Brady has dragged more than twenty parties into court to litigate matters that have already been determined and claims that lack any substance."
>
> "The trial court and the appellate court courts in the Prior Action have denied him such control. Undeterred, he has ignored these courts' rulings and brought these meritless actions, abusing the judicial process."
>
> "This is a near perfect example of frivolous conduct that warrants defendants request for the imposition of sanctions."

New York law is clear that a court has discretion to award attorneys' fees and issue sanctions only in cases of frivolous conduct.

> (a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. 22 N.Y.C.R.R. § 130-1.1

Under 22 N.Y.C.R.R. § 130-1.1, "conduct is frivolous if:"

> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.
>
> In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the (1) circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

It is clear and obvious given the Courts' numerous admissions regarding the merits of Plaintiff's claims both at Oral Arguments and in the July 15, 2014 decision that sanctions were not remotely warranted in this case.

Imposing sanctions was a form of retaliation against Plaintiff for having fought the Manhattan real estate developers, law firms and title insurance companies in court. It was retaliation for the exercise of Plaintiff's constitutional rights to seek redress through the courts for the uncompensated seizure of his property rights after the parties had asked for a Waiver.

1. **At the September 10, 2014 Hearing for an OSC Plaintiff Had Filed, Justice Kornreich Did Not Dispute Any of Plaintiff's Allegations, She Just Shrugged Them Off Confidently**

Mr. Berman was even given testimony showing that Judge Kornreich did not dispute that she had falsified the prior decision.

> THE COURT: So, I have read your papers, and let me say that I stand by my decision. I think my decision is legally required.
>
> The same request, the same legal request, really, was made in another action in front of another judge, and I am bound by that decision. It went all the way up to the Court of Appeals, so I stand by my previous decision.
>
> I am not going to stay enforcement of the sanctions. I believe, I really believe that bringing the action over and over and over

again both wastes the court's time, counsel's time, and your time, and it is frivolous. (Transcript p. 4:16-26, 5:1-6).

THE COURT: So, I don't believe that there is any reason for me to recuse myself. I don't believe that any decision I made previously was tainted in any way. I believe this case is over at this point, so I am denying your application—

BRADY: It figures.

THE COURT: —for your order to show cause.

BRADY: That figures, your Honor.

THE COURT: Pardon?

BRADY: I said that figures. Of course you would do that. So why don't we address the fact that it's undisputed that you falsified the prior decisions.

THE COURT: That I falsified?

BRADY: You falsified the prior decisions.

THE COURT: Sir, at this point I would admonish you.

BRADY: I'd like it to be on the record, you took out the part, your Honor, that said that "pursuant to paragraph 7, plaintiff has, in addition to the utilization of the roof, the right to construct or extend structures on the roof or above the roof to the extent that may from time to time be permitted under applicable law." This Court took that out of its decision to square it against me.

> THE COURT: Sir, you can say whatever you wish to say at this point. You've said it. At this point the record is closed. Your application is denied. Please step back.
>
> BRADY: Thank you, your Honor. More evidence.

D. The Motion Papers Submitted by the Attorney General and District Attorney Are a Cover-Up and a Continuation of the Unlawful Act

The District Attorney's Court Papers are filled with attacks on Plaintiff and repeatedly acknowledge Defendants did nothing to protect the Bradys and continued hiding the unlawful act that had taken place. On page 2 of Defendant's May 27, 2015 Motion to Dismiss, the Attorney General states the following:

> The cooperative's offering plan stated, in relevant part, 'The 12th floor and roof unit shall have, in addition to the utilization of the roof, the right to construct or extend structures upon the roof or above the same to the extent that may from time to time be permitted under applicable law.'
>
> The Attorney General then proceeds to state that:
>
> According to Brady, the portion of the offering plan quoted above reserved the air rights to him, exclusively, and therefore Owners Corp. could not sell the rights without his consent.
>
> According to Brady, Justice Friedman's decision 're-wrote' the offering plan in a manner that could not be squared with the plain language of the document.

> According to Brady, Justice Friedman's declaration constituted an intentionally false interpretation of the offering plan and was made with the express purpose of voiding Brady's rights.
>
> According to Brady, Justice Kornreich also 're-wrote' the offering plan so as to void Brady's right and then escalated the injustice by obscuring the prior orders of Justice Friedman and the Appellate Division in an attempt to 'destroy and silence' Brady.
>
> Brady alleges that Justice Kornreich admitted at oral arguments in the parties' motions that the prior orders were 'internally inconsistent,' yet she nonetheless entered a 'deceptive and unjust decision' in favor of the defendants, thereby revealing her corruption.

Notwithstanding all of the facts reiterated in the Attorney General's Motion to Dismiss, Defendants admit they took no action.

> DANY took no action in response to Brady's complaints about the judges who ruled against him. (p.1).
>
> Between December 2010 and February 2015—Brady sent a series of letter to the New York County District Attorney's Office alleging judicial corruption in connection with the adverse decisions. DANY declined to pursue a criminal investigation.
>
> Brady sent a final letter to DANY on February 6, 2015, in which he set forth 'detailed evidence' of the 'corruption' in the second

> round of litigation in state court, namely, Justice Kornreich's July 15, 2014 decision dismissing Brady's claims and imposing sanctions against him. DANY did not respond.
>
> DANY's alleged inaction in response to Brady's complaints of judicial corruption.
>
> DANY declined to pursue a criminal investigation or charges in response to his complaints about the state court judges who ruled against him in the air rights litigation.
>
> To the contrary, DANY explicitly informed Brady, in writing, that the office would not be assuming any role in connection with Brady's allegations of judicial corruption and that no criminal investigation would be opened.
>
> During roughly the same time period, Brady sent a series of complaints alleging judicial corruption to the Commission on Judicial Conduct, the Attorney General's Office, the Moreland Commission to Investigate Public Corruption, and the Governor's Office. None of these entities took responsive action.

Memorandum of Law in Support of DANY's Motion to Dismiss, May 27, 2015.

By Mr. Vance's own admissions, they declined to do any investigation whatsoever when shown that the contract to Plaintiff's co-operative commercial apartment has been rewritten to void its rights.

In other words, his Office permitted the unlawful rewriting of the contract description of Plaintiff's

apartment and, when sued for his inactions, he made many false claims, advanced false facts, and provided false instruments. His intent was unlawful and fraudulent. Mr. Vance and his Assistant District Attorneys were in on the scheme to help rich and powerful developers, their rich and powerful law firms and deep pocketed tittle insurance company, get away with seizing development rights that they all knew (and can no longer deny) were part of Petitioner's commercial New York City apartment.

Regardless of Cyrus Vance and his Office's admitted deliberate inaction, and regardless of this lawsuit, the new evidence cannot be ignored by the District Attorney. The District Attorney must protect Petitioner now and hold those who participated in the scheme to seize the rights belonging to Petitioner's Manhattan apartment accountable for their unlawful actions.

The Brady's want compensation for the Court and law enforcement-created controversy over the contract provision in which only judicial and State employees have argued the contract does not mean what the parties to the contract agree it means.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE NEW YORK STATE APPELLATE DIVISION, FIRST DEPARTMENT MISAPPLIED *IMBLER V. PACHTMAN* IN ITS FEBRUARY 8, 2018

The Appellate Division cited three cases in its February 8, 2018 decision: *Imbler v. Pachtman*, 424 U.S. 409 (1976), *Moore v. Dormin*, 252 AD 2d 421 (1st Dept. 1998), and *Arteaga v. State of New York*, 72 NY 2d 212 (NY: Court of Appeals 1988). Each of these cases is distinguishable from Petitioner's cases before this Court, as each case recognizes demarcations between activity which is covered by absolute or prosecutorial immunity, and actions that fall outside that defense, as in Plaintiff's cases.

In *Imbler v. Pachtman*, for example, the U.S. Supreme Court came to the following holding:

> "Held: A state prosecuting attorney who, as here, acted within the scope of his duties in initiating and pursuing a criminal prosecution and in presenting the State's case, is absolutely immune from a civil suit for damages under § 1983 for alleged deprivations of the accused's constitutional rights."

This means that according to *Imbler*, when a prosecutor initiates a prosecution and pursues an unlawful case, they have absolute immunity to allow the prosecutor to make discretionary decisions fairly and fearlessly. The District Court held that prosecutors had been afforded immunity from civil liability for "acts done as part of their traditional official functions." The Court of Appeals for the Ninth Circuit affirmed,

finding that the prosecutor's acts were committed during prosecutorial activities that were "an integral part of the judicial process."

Imbler used various formulations to describe the extent of a prosecutor's immunity, stating that absolute immunity would be available for prosecutors in "initiating a prosecution," "presenting the state's case," performing activities that are "an integral part of the judicial process," performing activities that are "intimately associated with the judicial phase of the unlawful process," and performing functions as an "advocate."

Imbler is clear that absolute immunity would not be afforded to prosecutors for administrative and investigative activities, and concluded that "drawing a proper line between these functions may present difficult questions, but this case does not require us to anticipate them."

In Petitioner's case, not once did any government law enforcement agency ever agree to meet Petitioner. Not once, not even for one minute. The job of government law enforcement agencies is to investigate and prosecute unlawful acts but in Petitioner's case it is clearly shown they are participating in the unlawful acts. Neither NYAG nor DANY "acted within the scope of his duties," as the is required for there to be an immunity defense.

II. THE COURT SHOULD GRANT CERTIORARI BECAUSE *MOORE V. DORMIN*, 252 AD 2D 421 (1ST DEPT. 1998) MAKES IT CLEAR THAT IMMUNITY ATTACHES TO SPECIFIC ACTIONS, NOT TO THE OFFICE OF ATTORNEY GENERAL ITSELF

The Court also cites *Moore v. Dormin* in its February 8, 2018 decision as case law standing for the proposition that a prosecutor has absolute immunity. But the holding of *Moore* makes it clear that the rationale behind prosecutorial immunity is to prevent retaliation from a defendant, often an unlawful defendant, against the prosecutor, and that such immunity, which Petitioner is not disputing in this Motion, extends only to those activities undertaken in their capacity as prosecutors. The case law is very clear that the immunity privilege extends to the activity, not the office itself, otherwise being appointed to a position with prosecutorial immunity would be a license to commit unlawful act, which clearly it is not.

> The absolute immunity arising from the prosecutor's exercise of his quasi-judicial discretion reflects a public interest in shielding public officials from retaliatory lawsuits so as to allow them to freely exercise their discretion within the scope of their duties (*id.*, at 216, 532 N.Y.S.2d 57, 527 N.E.2d 1194; *Rodrigues v. City of New York,* 193 A.D.2d 79, 86, 602 N.Y.S.2d 337). Not all discretionary actions, though, are absolutely immune (*Arteaga v. State of New York*, *supra*, at 216, 532 N.Y.S.2d 57, 527 N.E.2d 1194). Our courts take a functional approach to the issue. We have long provided the prosecutor, as a

> quasi-judicial officer, with immunity from civil suits only for official acts performed in the investigation and prosecution of criminal charges (*Rodrigues*, *supra*, at 87, 602 N.Y.S.2d 337; *Schanbarger v. Kellogg*, 35 A.D.2d 902).
>
> "We have linked a prosecutor's entitlement to absolute immunity to the nature of the function being performed rather than to the office itself."
>
> "This case differs from cases in which the prosecutor was not given the benefit of immunity because he was acting outside the scope of the law (*see, e.g., Rodrigues v. City of NY*, 193 A.D.2d 79, 85, 602 N.Y.S.2d 337 [no immunity for prosecutors who issued subpoenas to conduct their own investigation of plaintiffs before convening Grand Jury]). Here, the prosecutor was not gratuitously disparaging an ordinary citizen to the latter's employer."

A. *Arteaga v. State of New York*, 72 NY 2d 212 (NY: Court of Appeals 1988)

The Appellate Division also cites *Arteaga v. State of New York*, a case which clearly establishes a distinction between which actions are covered under immunity:

> "Not all discretionary actions, however, are accorded absolute immunity. Whether an action receives only qualified immunity, shielding the government except when there is bad faith or the action taken is without a reasonable basis or absolute immunity, where

> reasonableness or bad faith is irrelevant, requires an analysis of the functions and duties of the particular governmental official or employee whose conduct is in issue. The question depends not so much on the importance of the actor's position or its title as on the scope of the delegated discretion and whether the position entails making decisions of a judicial nature—*i.e.*, decisions requiring the application of governing rules to particular facts, an "exercise of reasoned judgment which could typically produce different acceptable results."

"An exercise of reasoned judgment which could typically produce different acceptable results" is precisely what the NYAG and DANY did not do in Petitioner's case. The Attorney General did not produce a report with recommendations that could then be challenged in an Article 78 proceeding. Rather, both Eric Schneiderman and Cyrus Vance decided to collude with the corrupt judges and the powerful developers, who are also political contributors and fund raisers.

III. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE ATTORNEY GENERAL AND DISTRICT ATTORNEY BOTH COMMITTED IMPERMISSIBLE CONDUCT PURSUANT TO FEDERAL AND STATE LAW

Recently, in *Kalina v. Fletcher*, 522 U.S. 118 (1997), a unanimous Supreme Court held that a prosecutor who perjured herself when certifying certain facts necessary to obtain an arrest warrant was not absolutely immune from suit. Applying the functional approach to immunities, *i.e.*, looking to "the nature of

the function performed, not the identity of the actor who performed it," *Forrester v. White*, 484 U.S. 219, 229 (1988), the Court asked "whether the prosecutor was acting as a complaining witness rather than a lawyer when she executed the certification []." *Id.* at 129. The Court rejected the prosecutor's argument "that the execution of the certificate was just one incident in a presentation that, viewed as a whole, was the work of an advocate and was integral to the initiation of the prosecution." *Id.* at 130. Because "[t]estifying about facts is the function of the witness, not of the lawyer," the prosecutor was not entitled to absolute immunity.

Supreme Court precedent thus clearly establishes that a prosecutor is not entitled to absolute immunity unless he is performing advocative conduct. The challenge is distinguishing between "those aspects of the prosecutor's responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate[]." *Imbler v. Pachtman*, 424 U.S. at 430-31 (1976).

The "advocative" function. "Advocative" conduct includes that which is "intimately associated with the judicial phase of the unlawful process. *Imbler v. Pachtman*, 424 U.S. at 430-31. In *Bernard v. County of Suffolk*, 356 F.3d 495, 503 (2d Cir. 2004) a unanimous three-judge panel wrote that advocative conduct is that which "lie[s] at the very core of a prosecutor's role as an advocate engaged in the judicial phase of the unlawful process." These "core" functions include:

- filing unlawful charges, *Imbler v. Pachtman*, 424 U.S. 409 (1976); *Pinaud v. County of Suffolk*, 52 F.3d 1139 (2d Cir. 1995), even when

done in bad faith. *Shmueli v. New York*, No. 03-0287 (2d Cir. Sept. 15, 2005);

- presenting evidence before a grand jury, *Hill v. City of New York*, 45 F.3d 653 (2d Cir. 1995);
- advocacy at a preliminary hearing, *Burns v. Reed*, 500 U.S. 478 (1991);
- accepting a plea bargain, *Taylor v. Kavanagh*, 640 F.2d 450 (2d Cir. 1981);
- retaining evidence pending a direct appeal, *Parkinson v. Cozzolino*, 238 F.3d 148 (2d Cir. 2001);
- advocating increased bail at a bail hearing, *Pinuad v. County of Suffolk*, 52 F.3d 1139 (2d Cir. 1995).

Even if a prosecutor is performing an advocative function, he will nonetheless be denied absolute immunity if he intertwines the exercise of his advocation function with impermissible conduct; or if he acts in excess of his statutorily-conferred jurisdiction.

Thus, absolute immunity will not shield him if he "has intertwined his exercise of prosecutorial discretion with other, unauthorized conduct." *Bernard v. County of Suffolk*, 356 F.3d 495, 504.

IV. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE ATTORNEY GENERAL'S FAILURE TO INVESTIGATE APPELLANT'S CLAIM IS NOT STANDARD PROCEDURE FOR THE NYAG'S OFFICE AND VIOLATED THEIR OWN PROCEDURES AND CASE LAW

As New York Case Law shows, the Attorney General routinely investigates and then prosecutes

claims against parties failing to enforce real estate contracts. His office meets with consumers, prepares recommendations, and then takes legal actions if the offending party challenges those findings.

In the present case there were unlawful acts from the very beginning to keep the case from being investigated. Appellant could not challenge the Attorney General's findings and recommendation in an Article 78 Proceeding because Mr. Schneiderman's office made no findings. In fact, one of the NYAG's responses to Appellant's legal claim is to admit they took no action and did nothing when shown certain judges had defrauded Petitioner of the rights in the Offering Plan contract.

This is in stark contrast to the NYAG's handling of a group of shareholders whose offering plan contract was not being enforced by Extell Development Corp. *CRP/Extell Parcel I v. Andrew Cuomo*, NY Slip Op 50073(U), January 19, 2012, Supreme Court, New York County. In that case, as in many others, a New York State court reviewed the administrative determination of the NYAG and ruled on those findings.

> "Even if adequate grounds exist for the administrative determination, the determination will be annulled if the grounds upon which it rests are inadequate or improper, or were not the actual grounds relied upon. Judicial review of administrative determinations is limited to the grounds invoked by the administrative body at the time of the decision." *In re AVJ Realty Corp.*, 8 A.D.3d 14 (1st Dep't 2004); *Mtr. of Stone Landing Corp. v. Bd. of Appeals*, 5 A.D.3d 496 (2d Dep't

2004); *Mtr of Cerame v. Town of Perinton Zoning Bd. of Appeals*, 6 A.D.3d 1091 (4th Dep't 2004); *Mtl'. of Civil Servo Employees Ass'n. Inc. v. N.Y. State Pub. Employment Relations Bd.*, 276 A.D.2d 967 (3d Dep't 2000).

It is well-settled New York law that a state agency such as the NYAG may not reach a different conclusion in a determination based on similar facts and law without explaining the reason for the inconsistent decisions. It is per se arbitrary and capricious for an agency to reach different results on substantially similar facts and law without explaining on the record the reason for same. *In re Charles A Field Delivery Services Inc.*, 66 N.Y.2d 516, 520 (1985).

Furthermore, "When an agency determines to alter its prior stated course it must set forth its reasons for doing so. Absent such an explanation, failure to conform to agency precedent will, therefore, require reversal on the law as arbitrary." *See also Mtr. of Richardson v. Comm'r of N.Y. City Dep't of Soc. Servs*, 88 N.Y.2d 35 (1996); *In re 2084-2086 BPE Assocs.*, 15 A.D.3d 288 (1st Dep't 2005). *See also Mtr of Civic Ass'n. of the Setaukets v. Trotta*, 8 A.D.3d 482 (2d Dep't 2004); and *Mtr. of Klein v. Levin*, 305 A.D.2d 316, 317-20 (1st Dep't 2003) providing reasons for the change in determination obviates the defect.

Pursuant to CPLR 7803(3), this Court must determine "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion. . . ." *CRP/Extell Parcel I v. Andrew Cuomo*, NY

> Slip Op 50073(U), January 19, 2012, Supreme Court, New York County.

Accordingly, in order to determine whether the Attorney General erred because it failed to consider extrinsic evidence of the parties' intent, we must initially determine whether the Attorney General committed an error of law with respect to its analysis under the law of contracts.

> To warrant annulment of an administrative determination, an erroneous evidentiary ruling must be "so egregious as to infect the entire proceeding with unfairness" (*Matter of Ackerman v. Ambach*, 142 A.D.2d 842, 845 [3d Dept. 1988])

An "Agency determinations must reach the right result for right reason. Where the wrong reason is stated, but the right result determined, the remedy is a remand for reconsideration." *Mtl'. Of Scherbvn v. Wavne-Finger Lakes BOCES*, 77 N.Y.2d 753 (1991); *Mtl'. of Montauk Improvement. Inc. v. Proccacino*, 41 N.Y.2d 913,913-14.

V. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE APPELLATE DIVISION, FIRST DEPARTMENT'S FEBRUARY 8, 2018 DECISION DOES NOT ADDRESS ANY OF PETITIONER'S CLAIMS UNDER 42 U.S.C. § 1983

The Appellate Division's February 8, 2018 decision states the following:

> In these actions, plaintiff/claimant, acting *pro se*, asserts claims under 42 U.S.C. § 1983 and state law alleging that defendants'

> refusal to investigate his allegations of judicial corruption constitutes gross negligence, willful misconduct, prima facie tort, negligent infliction of emotional distress, and a violation of the equal protection clause.
>
> To the extent any of these defendants can be sued at all, they are protected by absolute prosecutorial immunity, which applies to the decision whether or not to initiate a prosecution (*see Imbler v. Pachtman*, 424 U.S. 409, 431 [1976]), as well to the investigative and administrative acts that are intertwined with this decision, such as the decision not to investigate a complaint (*see Moore v. Dormin*, 252 A.D.2d 421 [1st Dept 1998, Rosenberger, J., concurring], lv denied 92 N.Y.2d 816 [1998]).

The cases cited by the Court in the February 8, 2018 decision do not permit city and state employees in power immunity to as corrupt as they like and claim immunity for their actions. The case law cited pertains to immunity for prosecutors for pursuing prosecutions and investigations of unlawful acts. The lawsuits are not about Defendants refusal to prosecute. The were filed because of defendants refusal to be an advocate for Petitioner when his property rights were being unlawfully seized under color of law.

These law suits were about financial compensation from the City and State of NY for the fraud for their employee's participation in the continued fraud scheme to help the politically-connected New York City developers and law firms get away with seizing the air rights

everybody knows were appurtenant to Petitioner's 12th Floor and Roof Unit apartment.

VI. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE JANUARY 17, 2018 ORAL ARGUMENTS PROVE THE EXISTENCE OF THE *QUID PRO QUO* RELATIONSHIP BETWEEN THE NYS COURTS AND LAW ENFORCEMENT

The Court and the parties in this case all agree that no department of government or agency took any action to protect Petitioner when he reported this unlawful act to them. David Lawrence, attorney for Eric Schneiderman, for instance stated at the January 17, 2018 Oral Arguments:

> "Mr. Brady has written to the FBI, the District Attorney's Office, the Attorney General's Office, the Commission on Judicial Conduct, NYPD, Office of the Governor. None of these officials or bodies have found anything that they believe is worth investigating."

NYAG does not deny they failed to take action or protect Petitioner, they simply assert that "absolute immunity" shields all of the agencies from any liability:

> "Absolute immunity covers the Attorney General's decision to not investigate a matter. That a matter is not worthy of investigation." (12:20). That immunity also covers the CJC's decision to not take action in Mr. Brady's case because that is a discretionary decision."
>
> "Same is true for the Office of the Governor's decision to take no action."

> "I don't know the number of complaints but there were certainly dozens of formal complaints, and many more informal complaints over the years. And, this is important, there was never in all the years covered by our investigation, there was not one actual investigation by the management or human resources into any one of these complaints, which you are legally required to do." (14:40).

Mr. Lawrence then asserts his agency's "immunity," stating that: "This matter is not worthy of investigation." "Such discretionary decisions are entitled to absolute immunity."

The Oral Argument transcript shows the First Department Judges sitting silent and refusing to answer when asked the following questions by James H. Brady:

A) Why doesn't my contract mean what is says on its face?

B) Why doesn't my contract mean what the parties to the contract agree it means?

C) Why doesn't my contract mean the only thing that the words can be construed to mean?

D) What line of reasoning or legal authority permitted Judge Kornreich to rewrite my contract to void its rights and to void the rights the Appellate Court said belonged to my 12th Floor and Roof Unit Apartment? The Judges sat silent and would not answer these questions because no line of reasoning or legal authority would permit a court to

> alter and forge a new contract without the consent of the parties to the contract.

The January 17, 2018 Oral Argument transcript shows the Assistant Attorney General completely discarding the truth and the existence of unlawful conduct and instead arguing that James H. Brady's claims are meritless and not that the courts and the Attorney General Office both "enjoy immunity" for their actions.

VII. THE COURT SHOULD GRANT CERTIORARI BECAUSE ACCORDING TO ATTORNEY GENERAL ERIC SCHNEIDERMAN HIMSELF, THE GOVERNMENT HAS LIABILITY FOR THE CIVIL RIGHTS VIOLATIONS OF ITS EMPLOYEES

Defendant Eric Schneiderman, the New York State Attorney General, filed a Verified Petition civil rights law suit against The Weinstein Companies (TWC) in New York on Sunday, February 8, 2018. A reading of the Complaint shows that the Mr. Schneiderman is not only accusing Harvey Weinstein himself of sexual harassment and *quid pro quo* sexual exploitation, but is also accusing the Weinstein Companies' Board of Directors of doing nothing about the many complaints filed by employees, and of covering-up, and even facilitating, Harvey Weinstein's unlawful acts.

The hypocrisy of Mr. Schneiderman can be shown by his accusations that the Weinstein Companies are engaged in exactly the same conduct as he is vis-a-vis the numerous complaints Petitioner have attempted to file with his office and the protection in the face of an unlawful act that Petitioner have sought from

his office. For example, the Complaint against TWC includes the following allegations:

- In paragraph 47 of the Complaint, NYAG alleges that the Board had "No follow-up communications to complaints."
- In paragraph 48, NYAG asserts that "Employee followed up TWC conducted no investigation."
- In paragraph 60, the Complaint states: "TWC did not take adequate steps to investigate the allegations or to prevent future recurrence of such conduct."
- In paragraph 63, "TWC is responsible for the unlawful conduct described herein."
- In paragraph 85, NYAG alleges that "TWC was aware of Harvey Weinstein's misconduct and failed to take reasonable steps to investigate and end it."
- In paragraph 85, the Complaint asserts that there were "no anti-retaliation protections existed" at the company for employees who had complained of Harvey Weinstein's behavior.
- In paragraph 91, the Complaints states that "On not a single occasion was Harvey Weinstein subjected to a formal investigation or to restrictions on his behavior."
- In paragraph 101, we learn of "The Board's decision to avoid investigating misconduct."

Mr. Schneiderman states the legal principle that "The individual perpetrator is named but the corporate or government entity also has liability." (10:25).

This is the same principle underlying Petitioner's suits, that the State of New York and the City of New York are responsible for the unlawful acts and civil rights violations of the judges and law enforcement personnel who engaged in an unlawful *quid pro quo* to deprive Petitioner of his civil rights and seize Petitioner's property rights by rewriting the unambiguous Offering Plan contract. As Mr. Schneiderman states in paragraph 63 of the Complaint, "TWC is responsible for the unlawful conduct described herein."

Mr. Schneiderman calls what occurred at The Weinstein Company "a systemic breakdown in their compliance with legal obligations." This is also what Petitioner proved in his Complaints before this Court, that there is a systemic problem involving an unlawful *quid pro quo* between the New York State courts and law enforcement.

CONCLUSION

The Appellate Division's February 8, 2018 Decision shows that all of Brady's claims were wrongly and unjustly dismissed "with costs" based on "prosecutorial immunity" and the misapplication of this Court's Decision in *Imbler v. Pachtman*, 424 U.S. 409, 431 [1976] and related cases.

This Court made clear that only after a "decision" is actually issued would prosecutorial immunity apply, and that not all acts are discretionary, and further that not all discretionary acts are immune if they constitute impermissible conduct.

The New York State Courts have erred and misapplied this Court's holdings, causing violations of the Fifth and Fourteenth Amendments, and obstruction of justice. Petitioner's Writ should be granted because this issue of national importance and involves one state's violations of federal law.

Respectfully submitted,

JAMES H. BRADY
PETITIONER PRO SE
510 SICOMAC AVENUE
WYCKOFF, NJ 07481
(201) 923-5511
BRADYNY@GMAIL.COM

NOVEMBER 28, 2018