No. A-____

IN THE SUPREME COURT OF THE UNITED STATES

MARIE LAVENTURE, each individually and on behalf of the Estate of CHERYLUSSE LAVENTURE, and the Estate of MARIE THERESE FLEURICIANE DELINAIS, and the additional persons and their representatives listed on Exhibit 1, and on behalf of all others similarly situated, MAGGIE LAVENTURE, each individually and on behalf of the Estate of CHERYLUSSE LAVENTURE, and the Estate of MARIE THERESE FLEURICIANE DELINAIS, and the additional persons and their representatives listed on Exhibit 1, and on behalf of all others similarly situated, SANE LAVENTURE, each individually and on behalf of the Estate of CHERYLUSSE LAVENTURE, and the Estate of MARIE THERESE FLEURICIANE DELINAIS, and the additional persons and their representatives listed on Exhibit 1, and on behalf of all others similarly situated, CARMEN LAVENTURE, each individually and on behalf of the Estate of CHERYLUSSE LAVENTURE, and the Estate of MARIE THERESE FLEURICIANE DELINAIS, and the additional persons and their representatives listed on Exhibit 1, and on behalf of all others similarly situated,

Petitioners.,

v.

UNITED NATIONS, UNITED NATIONS STABILIZATION MISSION IN HAITI, BAN KI-MOON, Secretary-General of the United Nations, EDMOND MULET, former Under Secretary-General for the United Nations Stabilization Mission in Haiti, CHANDRA SRIVASTAVA, former Chief Engineer for the United Nations Mission to Haiti, PAUL AGHADJANIAN, Chief of Mission Support for the United Nations Mission to Haiti, PEDRO MEDRANO, Assistant United Nations Secretary General, MIGUEL DE SERPA, Under Secretary for Legal Affairs,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI

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March 14, 2019

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APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI

To the Honorable Ruth Bader Ginsburg, Associate Justice of the United States and Circuit Justice for the Second Circuit:

Pursuant to this Court's Rules 13.5, 22, and 30.3, Marie Laventure, *et.al.*, (hereinafter "Petitioners") respectfully request a 45-day extension of time, to and including May 13, 2019 (May 12, 2019 falling on a Sunday), within which to file a petition for a writ of certiorari to review the judgment of the Second Circuit in this case. Petitioners have not previously sought an extension of time from this Court. The decision of the United States Court of Appeals for the Second Circuit was issued on December 28, 2018. If not extended, the time for filing a petition will expire on March 28, 2019. Consistent with Rule 13.5, this application is being filed at least ten days before that date.

A copy of the Second Circuit's summary order and judgment (available at 746 F. App'x 80 (2d Cir. 2018)) is attached hereto as Exhibit A. This Court has jurisdiction over this case under 28 U.S.C. § 1254(1).

1. The decision of the Second Circuit addressed whether the United Nations, the United Nations Stabilization Mission in Haiti (MINUSTAH), and several current and former United Nations officials, including the former Secretary-General (hereinafter, collectively, "United Nations," "UN" or "Respondents") have waived immunity from suit in U.S. courts of otherwise competent jurisdiction for the tortious introduction of a virulent strain of cholera into Haiti by the UN, resulting in a plague which thus far has killed approximately 10,000 and sickened more than 1 million more.

2. Petitioners are American citizens, Haitian citizens residing in the United States, as well as Haitian citizens in Haiti, all of whom were damaged as a result of the UN's tortious conduct, either directly or as surviving family members of those who have been killed. Respondents in this action, who did not enter an appearance in either the District Court or before the Court of Appeals, are the United Nations, its subsidiary MINUSTAH, and current or former officials of these organizations.

3. In the wake of the UN's introduction of cholera into Haiti, Petitioners sued for damages. The United Nations, through a letter to the United States government, asserted immunity from suit under Article II, § 2 of the Convention of Privileges and Immunities of the United Nations ("CPIUN"), 21 U.S.T. 1418, which specifies that the UN "shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity." The CPIUN's authority, in turn, flows from the Charter of the United Nations, which provides that the UN "shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes." U.N. Charter art. 105, § 1.

4. It is Petitioners' assertion that the UN had previously expressly waived its immunity from suit in U.S. courts and therefore could not reassert it now. *See e.g., Restatement (Third) of the Foreign Relations Law of the United States* § 456(3) (1986) ("Under the law of the United States, a waiver of immunity may not be withdrawn, except by consent of all parties to whom (or for whose benefit or protection) the waiver was made."). More specifically, in two reports issued in 1996 and 1997, the United Nations, through statements of the Secretary-General, expressly assumed liability for private law damages caused by UN forces in circumstances such as those present in this case. These reports were then adopted legislatively by the full UN General Assembly, and therefore made binding on the Organization as law. 746 F. App'x 81-82.

5. The Second Circuit upheld the District Court's ruling that this express assumption of liability by the United Nations relates only to claims brought before a Standing Claims Commissions or other internal UN claims procedures ("The reports describe procedures for redress for third-party claims through standing claims commissions or internal UN procedures. . . It is clear that the reports' descriptions of the UN's 'liability' refer only to their responsibility in these non-judicial forums." 746 F. App'x 81-82). Significantly, however, nowhere in any of the statements of the Secretary General, nor in the binding resolution of the General Assembly adopting these reports, does it say that this assumption of liability is limited to the UN's non-judicial forums. Rather, the Second Circuit suggests these reports imply such limitation. It is also important to understand that the Standing Claims Commissions referred to in the Second Circuit's decision do not exist. They have never existed in the history of the United Nations, and other internal procedures are voluntary and nonbinding on the UN. In other words, there is no binding forum for the adjudication of these claims. The Second Circuit did not address this.

6. Thus, this decision raises serious constitutional questions and would appear to be at odds with common law and this Honorable Court's established caselaw as relates to both liability and the express waiver of immunity in other contexts. The decision is also in conflict with the understanding of other Circuits and state courts as to the meaning of the term "liability," *see, e.g., Kirsch v. Barnes*, 263 F.2d 692 (9th Cir. 1959). It also raises key questions as to the pleading requirements to survive dismissal under the Federal Rules of Civil Procedure, in conflict with *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Given the level of injury and the number of Plaintiffs involved, as well as the likelihood that such a devastating act could happen again, the importance of this case cannot be overstated.

7. Liability is defined as an agreement to be bound to an enforceable obligation in law and justice. *See e.g.*, Black's Law Dictionary (10th ed. 2014), *Liability*. There is no other definition. Liability can be absolved through immunity, it can be limited temporally or financially, but it cannot be relegated to a forum that doesn't exist and still be called liability. Without some mechanism for enforceability, the term liability is meaningless. It is implausible, therefore, to suggest that both the Secretary General of the UN and the UN General Assembly did not understand the meaning of the term liability, or that either would apply this term to refer only to a forum that is nonexistent or otherwise nonbinding. Thus, an express intent to waive immunity can be the only plausible explanation for the Secretary General's statements.

8. In considering waiver of immunity in other contexts, this Court has ruled that "[w]e have never required. . . magic words," for an express waiver, but rather an "unmistakable expression of... intent." *FAA v Cooper*, 566 U.S. 284, 291 (2012). It is also quite clear under the law that "[w]here words are employed. . . which had at the time a well known meaning at common law or in the law of this country, they are presumed to have been used in that sense," *Lorillard, Div. of Loew's Theatres, Inc. v. Pons*, 434 U.S. 575, 576 (1978). Further, while there is no direct precedent regarding the express waiver of immunity by the United Nations, this Honorable Court has ruled with respect to another entity with absolute immunity, the United States government, that such assumption of liability ". . . is doubtless an "unequivoca[l] express[ion]" of the Federal Government's waiver of its own sovereign immunity... since we cannot imagine any other plausible explanation for this unqualified language." *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 10 (1989) (citations omitted); abrogated on other grounds in *Seminole Tribe v Florida*, 517 U.S. 44 (1996). In other words, where there is no other plausible explanation, this Court has found an unmistakable expression of intent to expressly waive immunity.

9. It is not only implausible to suggest that the Secretary General was referring to these internal dispute processes when using the term "liability," it is impossible given the nonexistence of a binding forum for enforcement. As this Court has ruled "*Lex non intendit aliquid impossible* is a familiar maxim of the law. The supposition should not be indulged that [a legislative body] . . . intended to make its protection depend upon the performance of conditions which it was physically impossible to perform." *Chew Heong v United States,* 112 US 536, 554 - 555 (1884)).

10. Thus, Petitioners assert that this Court's line of decisions make clear that an express and unequivocal assumption of liability by an immune entity without limitation to a *binding* forum is, without question, a express waiver of immunity to the jurisdiction of any court of otherwise competent jurisdiction, since this Court has also long held that "wherever, by either the common law or the statute law . . . a right of action has become fixed and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters . . . ." *Dennick v. Railroad Co.*, 103 U.S. 11, 18 (1881).

11. Petitioners also believe that, in holding plaintiffs, at the pleading stage under Federal Rules of Civil Procedure 12(b)(1) and 12(h)(3), to a standard that is clearly beyond any other this Court has enumerated for express waiver of immunity in other contexts, the Second Circuit is in conflict with the pleading requirements set forth by this Court, most notably the "plausibility" standard of *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). In that regard, this Court should consider whether the impact of this decision is to impermissibly "bolt the door to equal justice." *Griffin v. Illinois*, 351 U.S. 12, 16 (1956).

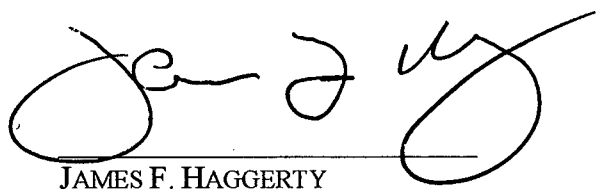
12. Applicant intends to file a petition for a writ of certiorari asking this Court to review the Second Circuit's decision. The petition for certiorari is currently due March 28, 2019. Counsel

of record, a sole practitioner (who is scheduled to be admitted to this Court on March 18, 2019), has primary drafting responsibility for the petition. In addition to his role as counsel of record in this action, undersigned counsel is an author and consulting expert on the communications aspects of litigation, and therefore not exclusively an appellate practitioner. He has approached four separate appellate counsel to assist in the preparation of this appeal, none of whom were available. An extension of time to file the Petition for Writ of Certiorari is requested because undersigned counsel has never appeared on behalf of a litigant before this Honorable Court and requires additional time to become more acquainted with this Honorable Court's Rules and to prepare Petitioner's putative petition towards this Court's just, accurate and fair adjudication.

13. Counsel are working diligently on this case. But because of the significant effect of the Second Circuit's decision on the law of liability, waiver of immunity and the pleading standards for a motion to dismiss under the Federal Rules of Civil Procedure, sufficient time to thoroughly prepare the petition is essential.

14. Wherefore, Petitioner respectfully requests that the time within which it may file a petition for a writ of certiorari be extended to and including May 13, 2019.

Respectfully submitted,



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