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February 14, 2022

Hon. Scott S. Harris
Clerk
United States Supreme Court
1 First Street, N.E.
Washington, DC 20543

Re: *Keil v. City of New York* Docket No. 21A398

Dear Mr. Harris:

We write on behalf of Applicants in *Keil,supra*. Early Friday evening, Justice Sonia Sotomayor denied our application for a writ of injunction in support of this court's jurisdiction. We write pursuant to Supreme Court Rule 22.4 to refer the application to Justice Neil M. Gorsuch.

The New York City Department of Education, a Respondent, has begun to execute a mass purge of teachers who refuse COVID-19 vaccination for religious reasons. The Second Circuit found that the Department's prior implementation of its vaccine mandate was unconstitutional but gave the City a third chance to review Applicants' exemption requests by an *ad hoc* panel, composed of City's attorneys and others, created solely for review of COVID-19 accommodations.

The Citywide panel denied the applications from 13 of 14 Applicants, giving no reason for the denials except failure to "meet criteria." The denial emails threatened sanctions if Appellants failed to vaccinate or surrender rights in three business days. Applicants immediately asked the District Court for an injunction. Applicants appealed its denial. A Second Circuit motions panel dissolved a one-judge injunction, partly because it held that the Applicants had failed to supply proof that the Citywide panel decisions had not adhered to Title VII requirements or of irreparable harm, and scheduled a merits hearing for February 24th. In the meanwhile, the Department sent termination notices to many of Applicants, with different effective dates, including February 11, 14 and beyond. Unless the Supreme Court issues an emergency injunction, our clients will lose either their religious (and bodily) integrity or their employment. It is a fluid situation in which, as has been widely reported in the press, Respondent Mayor Eric Adams is yet considering just how many New York City workers to fire; every day counts.

Title VII and local laws burden the employer to "demonstrate" the basis for adverse action. When there is proof of prior discrimination, the employer is required to "articulate" valid, lawful reasons for adverse action. We may be able to convince the Merits panel of these points two weeks from now, but by then the Applicants may no longer have jobs to defend, or insurance for their families, or an unbroken faith. We respectfully ask the Court to enjoin the termination of the Applicants until the Second Circuit Merits panel has issued its decision, and for thirty days thereafter to allow time for Applicants to prepare a petition for certiorari if necessary.

Respectfully submitted,

/s/ Jonathan R. Nelson
Counsel for Plaintiffs

/s/ Sujata S. Gibson
Counsel for Plaintiffs

cc: New York City Corporation Counsel