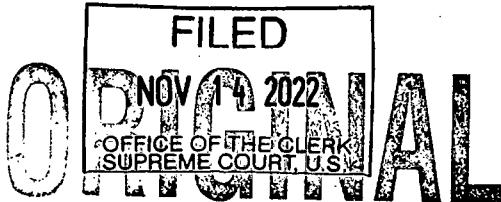


22-6723
- Application No. 22-

IN THE
Supreme Court of the United States



SYED K. RAFI, Ph.D.

Petitioner

v.

Respondents

YALE UNIVERSITY SCHOOL OF MEDICINE
ALLEN E. BALE, MD. (*in Official & Personal Capacity*)
RICHARD P. LIFTON, MD., PH.D.
&
BRIGHAM AND WOMEN'S HOSPITAL
(Harvard University Medical School)
CYNTHIA C. MORTON, PH.D.

Respondents

BRIEF FOR *PRO SE* PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI
TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUITS
DOCKET # 21-268

Syed K. Rafi, Ph.D.
Pro Se Petitioner
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QUESTIONS PRESENTED

1. Does the Traditional Method of Determining Jurisdiction Under Territorial Principles apply to “Interstate Telephonic and Email–Computer Server Based Conspiratorial Vindictive Employment Reprisals” as Alleged in This Litigation, given the Supreme Court’s ruling in *Strassheim v. Daily*, 221 U.S. 280, 281 (1911)- that “*a state may prosecute individuals for acts committed outside a jurisdiction when the effect of the acts is the commission of a crime within the jurisdiction*”?
2. Did the Appellate Court and the District Court fail to consider the former employee’s [petitioner, Dr. Rafi] allegations of continuing vindictive employment retaliations around the nation from 2015 through 2021 “by his former employer and professional training institution [Yale University School of Medicine]” disregarding this Supreme Court’s binding ruling in *Robinson V. Shell Oil Company*, 519 U.S. 337 (1997)- that former employees may sue under Title VII of the Civil Rights Act to challenge retaliation by their past employers ?
3. Did the Appellate Court and the District Court fail to consider the former employee’s [petitioner, Dr. Rafi] allegations of continuing vindictive employment retaliations around the nation from 2015 through 2021 “by his former employer and professional training institution [Yale University School of Medicine]” disregarding this Supreme Court’s binding ruling in *Lawlor V. National Screen Service Corp.*, 349 U.S. 322 (1955)- that “*Res Judicata Does Not Bar a Suit, Even If It Involves the Same Course of Wrongful Conduct as Alleged Earlier, So Long as The Suit Alleges New Facts or A Worsening of the Earlier Conditions*” ?

RELATED PROCEEDINGS

The following proceedings are related to this case within the meaning of the Rule 14.1(b)(iii):

- Syed K. Rafi, PhD. v. Yale University School of Medicine & Dr. Richard Lifton. Petition for *Writ of Certiorari* filed by Syed Rafi; Application No.18-17A1294. Not considered.
- Syed K. Rafi, Ph.D. v. Yale University School of Medicine; Allen E. Bale, MD. (*In Official & Personal Capacity*); Brigham & Women's Hospital (Harvard University Medical School); & Cynthia C. Morton, PhD. U. S. Court of Appeals for the Second Circuit Docket # 21-268. Appellant's motion for recalling the mandate and to reinstate the appeal was denied on 12/09/2022; Mandate was issued on 09/09/2022; Summary Order and Judgment affirming the judgment of the District Court was issued on 05/04/2022.
- Syed K. Rafi, PhD. v. Yale University School of Medicine, Allen E. Bale, MD. (*In Official & Personal Capacity*); Brigham & Women's Hospital (Harvard University Medical School); & Cynthia C. Morton, PhD. Civil Action No.: 3:18-CV-00635 (AWT): U.S. District Court for the District of Connecticut. Judgment was entered on 07/28/2020.

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OTHER AUTHORITIES

PEER-REVIEWED PUBLISHED ARTICLES

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Sandra Tafuri. New York Law Review, Vol. 71: 791. 1996. https://www.nyulawreview.org/issues/volume-71-number-3/title-viis-antiretaliation-provision-are-employees-protected-after-the-employment-relationship-has-ended/	
Potential Employer Liability for Employee References, University of Richmond Law Review, Kyle E. Skopic, 1987, Volume 21, Article 9 -----	19
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State Jurisdiction Over Interstate Telephonic Criminal Conspiracy, Washington and Lee Law Review Volume: 45 Issue: 4 Dated: (Fall 1988) Pages: 1475-1498. K. D. Kirmayer, 1988 -----	6, 15
https://www.ojp.gov/ncjrs/virtual-library/abstracts/state-jurisdiction-over-interstate-telephonic-criminal-conspiracy	
Federal Conspiracy Law: A Brief Overview. Updated April 3, 2020. Congressional Research Service. R4122: https://crsreports.congress.gov -----	12

WEB SITE REFERENCES

Laboratory Genetics and Genomics Programs.pdf	
(abmgg.org)	7, 25, 28
http://www.abmgg.org/pdf/Laboratory%20Genetics%20and%20Genomics%20Programs.pdf	

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Petitioner, *pro se*, respectively petitions for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

Appellant's 11/05/2022 motion for recalling the mandate and reinstating the appeal [*App. #1*]; Appeal Court's Order, dated 12/09/2022, Denying consideration of the motion to recall the mandate [*App. #2*]; Appeal Court's Mandate, dated 09/09/2022 [*App. #3*]; Appellant's petition for rehearing *en banc*, dated 06/22/2022 [*App. #4*]; Appellant's petition to incorporate two tables listing his candidacies that were allegedly retaliated against during the viable period for this litigation [*App. #5*], and the court Granting the motion for the inclusion of the two tables [*App. #6*]; Appeal Court denying appellant's petition for rehearing *en banc*, dated 08/15/2022 [*App. #7*]; Appeal Court's Summary Order, dated 05/04/2022 [*App. #8*]; and the District Court's Ruling on Motion to Dismiss, dated 07/28/2020 [*App. #9*].

JURISDICTION

Upon Connecticut District Court issuing its ruling in this litigation on 07/28/2020 [*App. #9*], plaintiff Rafi, *pro se*, promptly filed his appeal of the District Court's decision at the Second Circuit Appellate Court by filing the notice of civil appeal on 02/09/2021. On 05/04/2022 [*Docket # 115*] the Appeal Court issued its Summary Order and Judgment [*App. #8*] simply affirming the judgment of the District

Court. On 06/22/2022 [*Docket # 133*] appellant filed a petition for rehearing *en banc* [*App. # 4*].

On 08/15/2022 [*App. #7: Docket # 140*] the Appellate Court issued an Order Denying the petition for rehearing or, in the alternative for rehearing *en banc*, reaffirming its earlier (dated 05/04/2022) Summary Order and Judgment [*App. #8*]. Finally, on 09/09/2022 a *ditto* copy of the 05/04/2022- Summary Order and Judgment [*App. #8: Docket # 115*] was docketed by the Appellate Court as its Judgment Mandate as well [*App. #3: Docket # 141*].

As a final effort at the Appellate Court, on 11/05/2022 appellant made a motion for recalling the mandate and to reinstate the appeal, setting forth the following concise statements of the relief sought therein:

- I.** The mandate [*App. #3*] at page 6, lines 4-6- has unjustifiably concluded that “the complaint did not specify any events that could not have been raised in the prior complaints”, by avoiding the appellant’s allegations of “verified” more than 15 such specific nation-wide continuing employment reprisal- events that have been docketed and argued in the petition for rehearing *en banc* [*App. #4*];
- II.** Secondly, the mandate [page 4, lines 2-11] also totally ignores the alleged, verified logical modus operandi for Dr. Bale’s ability to veto Dr. Rafi’s candidacies ceaselessly vindictively around the nation;

III. Thirdly, given that the defendants did not submit any affidavit denying the allegations, as the mandate itself has noted [page 3, lines 17-19] citing *MacDermid, Inc., v. Deiter*, 702 F.3d at 19 728 (2d Cir. 2012) [App. #14]: “*the allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits.*” and

IV. Appellant’s allegations of later-newer continuing employment retrIBUTions “by a former employer and professional training institution, i.e., Yale University School of Medicine (appellee) is indeed actionable by the US Supreme Court’s “binding” rulings in *Robinson v. Shell Oil Company*, 519 U.S. 337 (1997) [App. #10], and in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955) [App. #11]:

“Res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions”.

Note: For a recent application of the ruling in *Lawlor v. National Screen Service Corp.*, See *State of Ohio ex rel. Susan Boggs, et al. v. City of Cleveland*, 655 F.3d 516 (6th.Cir.2011) [App. #17].

Please see App. # 1 herewith for a detailed statement of the relief sought in the appellant’s petition for recalling the mandate and reinstating the appeal.

Despite the above valid arguments and grounds for recalling the mandate [App. # 1], on 12/09/2022 the Appeal Court’s Ordered Denying consideration of the motion/petition to recall the mandate [App. #2].

Therefore, now, as the only remaining legal avenue, Dr. Rafi is petitioning this Supreme Court seeking its intervention to assert its very

own rulings and judgments upon which his petition to recall the mandate and to reinstate the appeal at the appellate court *[App. #1]* relied on.

Sixty days extension of time to file this petition for *writ of certiorari* was granted by this Court on November 16, 2022. Subsequently, on January 18, 2023, another sixty days extension of time to file the petition was granted by this Court.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

Despite plaintiff / appellant's evidencing of convincing circumstantial, electronic- emails, and officially documented records of dozens of qualified candidacies at defendant Harvard Medical School's BWH and MGH as well as around the nation during the viable period of 2019 through 2021 for this litigation, in support of his allegations of ceaseless vindictive conspiratorial professional and scientific employment reprisals by his "*former employer and former professional training institution, Yale School of Medicine [YSM]*", the District Court as well as the Appellate Court have utterly failed to consider these viable allegations in this litigation, asserting that plaintiff / appellant has not alleged any new violations during this period, since there was "*no employer-employee relationship between him and YSM during the later period of 2019 through 2021*", nor did he apply for any position at YSM during this period, and there is no record of him living in Connecticut during the alleged period: *see: App. #3 & App. #8: Appellate*

Mandate & Summary Order: Appellate Dockets # 141 & 115: page 4, lines 2-11], which is reproduced below:

*"Rafi argues that he made a *prima facie* showing of personal jurisdiction by alleging that the defendants were all members of a conspiracy that formed in Connecticut. The complaint did not allege facts establishing that either of the BWH defendants, residents of Massachusetts, has ever been present in Connecticut or formed a conspiracy in that state. Nor did it allege that Rafi was denied a job in Connecticut or ever resided in that state. While the complaint alleges one Connecticut-based "co-conspirator institution," there were no allegations connecting either of the BWH defendants to that institution. Accordingly, because there was no allegation that the BWH defendants committed a tortious act in Connecticut, or that they committed an act causing injury to Rafi in the state, the district court properly dismissed the claims against them for lack of personal jurisdiction. Con. Gen. Stat. §§ 33-929(f), 52-59b(a)."*

REASONS FOR GRANTING THE PETITION

The above erroneous assertions by the Appellate as well as the District Courts stand in stark contrast to the following listed rulings by this Supreme Court:

- ***Robinson v. Shell Oil Company***, 519 U.S. 337 (1997): App. #10.
- ***Lawlor v. National Screen Service Corp.***, 349 U.S. 322 (1955): App. #11.
- ***Whitfield v. United States***, 543 U.S. 209, 218(2005).
- ***Krulewitch v. United States***, 336 U.S. 440, 69 S. Ct. 716, 93 L. Ed. 790 (1949).
- ***Kotteakos V. United State***, 328 U.S. 750, 66 S. Ct. 1239, 90 L. Ed. 1557 (1946).
- ***Blumenthal v. United States***, 332 U.S. 539, 557-58 (1947).
- ***Bannon v. United States***, 156 U.S. 464,468-69 (1895): App. #12.
- ***Strassheim v. Daily***, 221 U.S. 280, 281 (1911): App. #13.

The District Court and the Appellate Court have erroneously and illogically opted to adopt the traditional method of determining jurisdiction under territorial principles that are not directly applicable to interstate telephonic and email-computer server-based conspiratorial vindictive employment reprisals.

Petitioner asserts that as a “former employee and former professional medical genetics trainee at Yale School of Medicine,” his allegations of continuing *[2015/2019 through 2021]* vindictive conspiratorial employment retributions by Dr. Bale at Yale University School of Medicine are indeed actionable.

The Appellate Court, by simply “rubber stamping” the District Court’s failure to consider “former employee’s [petitioner, Dr. Rafi]” verified and documented allegations of continuing vindictive conspiratorial employment retaliations around the nation even during the viable period for this litigation, i.e., since 2015/2019 through 2021, by his “former employer and professional training institution [Yale University School of Medicine]”- has disregarded this Supreme Court’s “binding” rulings in the above-cited landmark cases, as presented below.

The mandate *[App. #3]* on page 6, lines 4-6 has unjustifiably concluded that “the complaint did not specify any events that could not have been raised in the prior complaints”, by ignoring the appellant’s allegations of “verified” more than 15 such continuing telephonic /

computer-email obligatory former employer's [Yale] and former professional training institution's [Yale] references- based employment reprisal- events that have been docketed and argued in the petition for rehearing *en banc* [App. #4] as well as in the complaint proper, which are squarely based on the verified logical *modus operandi* for Dr. Bale's [tenured professor, Yale] ability to veto Dr. Rafi's professional and related research candidacies ceaselessly vindictively around the nation, due to Dr. Bale's ceaseless serving as the Yale's designated contact person since 2002-22- for verifying Dr. Rafi (*Yale's former employee and former professional medical genetics trainee*) past employment and professional training at Yale, as evidenced in complaint's exhibits depicting Dr. Bale's contact phone number, as well as his email address: see, **American Board of Medical Genetics [ABMG] official website:** <http://www.abmrg.org/pdf/Laboratory%20Genetics%20and%20Genomics%20Programs.pdf> . This ceaselessly facilitated nationwide contact with Dr. Bale at YSM as Dr. Rafi's former employer and his former Yale-ABMG professional training director. Failure to do so by any of Dr. Rafi's prospective employers could lead to "**Negligent Hiring**" lawsuits against the hiring medical institutions under the "**Tort of Negligent Hiring**" [*Docket # 23*].

Neither Dr. Bale, nor Yale, nor any of the alleged colluding partners at BWH/MGH/CHB [defendants] have submitted any affidavit

denying the allegations, as the mandate [App. #3] itself has noted on page 3, lines 17-19 citing ***MacDermid, Inc., v. Deiter***, 702 F.3d at 19 728 (2d Cir. 2012) [App. #14] - that “*the allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits.*”.

The allegations of continuing vindictive employment retributions by “*former employer & professional trainee- Yale (appellee)*” during the viable period 2019 through 2021 for this litigation, indeed are actionable by this Supreme Court’s “binding rulings” in [1] ***Robinson v. Shell Oil Company***, 519 U.S. 337 (1997) [App. #10] that:

“***Former employees may sue under Title VII of the Civil Rights Act to challenge retaliation by their past employers;***”

and in [2] ***Lawlor v. National Screen Service Corp.***, 349 U.S. 322 (1955) [App. #11] that:

“***Res Judicata Does Not Bar a Suit, Even If It Involves the Same Course of Wrongful Conduct as Alleged Earlier, So Long as The Suit Alleges New Facts or A Worsening of the Earlier Conditions.***”

But to the appellant's utter dismay, on 12/09/2022, the Appeal Court simply opted to Deny the motion for recalling the mandate.

Additionally, the lower courts, by adopting the traditional method of determining jurisdiction under territorial principles, *which is not directly applicable to interstate telephonic and email- computer server-based conspiratorial vindictive employment reprisals as alleged in*

this case, have blatantly disregarded this Supreme Court's multiple binding rulings in this regard in:

- ***Strassheim v. Daily***, 221 U.S. 280, 281 (1911): [App. #13]
“A state may prosecute individuals for acts committed outside a jurisdiction when the effect of the acts is the commission of a crime within the jurisdiction.”
- ***Whitfield v. United States***, 543 U.S. 209, 218 (2005):
“Venue is proper in any district in which an overt act in furtherance of the conspiracy was committed, even where an overt act is not a required element of the conspiracy offense.”
- ***Kotteakos V. United States***, 328 U.S. 750, 66 S. Ct. 1239, 90 L. Ed. 1557 (1946):
....*“Some eight or more different conspiracies of the same sort were executed “through a common key figure” ...*
- ***Blumenthal v. United States***, 332 U.S. 539, 557-58 (1947):
“Conspirators are vicariously liable for acts of their co-conspirators; each conspirator is responsible for acts of co-conspirators.” &
- ***Bannon v. United States***, 156 U.S. 464, 468-69 (1895). [App. #12]
“An indictment for a conspiracy under Rev. Stat. § 5440, the fact of conspiring must be charged against all the conspirators, but the doing of overt acts in furtherance of the conspiracy may be charged only against those who committed them.”

Wherefore, this petition for a Writ of Certiorari
should be granted.

QUESTION # 1

Does the Traditional Method of Determining Jurisdiction Under Territorial Principles apply to “Interstate Telephonic and Email--Computer Server Based Conspiratorial Vindictive Employment Reprisals”- as Alleged in This Litigation, given the Supreme Court’s ruling in *Strassheim v. Daily*, 221 U.S. 280, 281 (1911)- that “*a state may prosecute individuals for acts committed outside a jurisdiction when the effect of the acts is the commission of a crime within the jurisdiction*”?

ARGUMENTS FOR QUESTION # 1

I. The Traditional Method of Determining Jurisdiction Under Territorial Principles Is Not Directly Applicable to Interstate Telephonic and Email- Computer Server Based Conspiratorial Vindictive Employment Reprisals--As Alleged in This Litigation.

The alleged telephone and/or email-computer-based conspiracy occurred through Dr. Bale’s telephone and computer at Yale School of Medicine, which are located at Dr. Bale’s office- *the situs of the alleged continuing conspiratorial offense in this case*. Therefore, the jurisdiction for all defendants, in this case, should be accomplished through a protective approach to the jurisdiction, rather than the common-law method.

“Therefore, the traditional method of determining jurisdiction under territorial principles is not directly applicable to these interstate telephonic and/or email-based conspiracies.

Solving this jurisdictional problem requires the adoption of a nonterritorial principle on which to base criminal jurisdiction for interstate conspiracies.

In the interstate telephone hypothetical, the agreement that constitutes the crime of conspiracy occurs in the telephone wires between the two states,” See:

State jurisdiction over interstate telephonic criminal conspiracy, Washington, and Lee Law Review Volume: 45

Issue: 4 Dated: (Fall 1988) Pages: 1475-1498. K. D. Kirmayer, 1988.

<https://www.ojp.gov/ncjrs/virtual-library/abstracts/state-jurisdiction-over-interstate-telephonic-criminal-conspiracy>

In this instant case, between the State of Connecticut and the State of Massachusetts and several other States around the nation: Table # II [*see App. #5 & #6 herewith: Docket # 137 & 133; also see, Docket # 22: Appellant’s Brief, and Appellate Docket # 23: Brief- Appendix # 3]-* the co-conspiring institutions around the nation, several of those having conveyed to Dr. Rafi Yale’s [Dr. Bale] “third party” vetoing for their inability to consider petitioner’s qualified and in-demand diagnostic clinical cytogenetics, medical genetics, and even related research candidacies over these years.

It should be noted that the defendant institution- Harvard Medical School’s Brigham & Women’s Hospital has indeed acknowledged the petitioner’s qualifications as impressive and desirable in one of their recent emails to Dr. Rafi, which has been evidenced and

argued in the complaint and the Appellate Brief and its Appendix [*Docket # 22 & 23*], and in the appellate motion for rehearing *en banc* [*App. #4: Docket # 133: page 19, under title XII; App. #5 & #6: Docket # 137: Tables I & II*]. In this context, also see:

- ***Hyde v. United States*, 225 U.S. 347, 359 (1912): noting that the gist of conspiracy is agreement;**
- ***16 Am. Jur. 2v Conspiracy § 10* (1979 & Supp. 1987): noting that the place, where agreement occurs, is the situs of the offense of criminal conspiracy.**

Dr. Rafi, resided in New Haven, CT, as well as at Milford, CT, during his Yale work and ABMG professional training period: 2001-2004. As noted earlier, Dr. Bale has been the sole Yale-designated as well as ABMG's- designated professional contact person via telephone and/or email since 2004 through now, whenever and wherever Dr. Rafi seeks employment in his professional clinical cytogenetics and related medical genetics academic and research fields- for the "mandatory verification of Dr. Rafi's professional training at YSM, given Dr. Bale's unceasingly continuing directorship of the ABMG- training program at YSM since the year 2000 to 2021-", which has been unequivocally established in Appellate Brief [*Docket # 22 & 23: Appendix # 2 therein: appendix serial page #13-30*].

Additionally, the jurisdiction is proper for BWH/HMS defendants under the Connecticut long-arm statute and the Due Process Clause of the Fourteenth Amendment, as this Appellate Court has noted in its

Summary Order [App. #8: Docket # 115: page 3, lines 12-14], citing its such ruling in **MacDermid, Inc., v. Deiter**, 702 F.3d at 19 728 (2d Cir. 2012) [App. #14].

The Connecticut long-arm statute indeed provides that a court may exercise personal jurisdiction over any nonresident individual... who in-person or through an agent: or (5) uses a computer network, as defined in subdivision (3) of subsection (a) of said section, located within the state. See, **MacDermid, Inc.**, 702 F.3d at 19 728 (2d Cir. 2012) [App. #14].

Conn. Gen. Stat. § 52-59b(a): The statute incorporates the following definitions: (1) "Computer" means an electronic, magnetic, or optical device or group of devices that, pursuant to a computer program, human instruction, or permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or a person. "Computer" includes any connected or directly related device, equipment, or facility that enables the computer to store, retrieve or communicate computer programs, computer data, or the results of computer operations to or from a person, another computer, or another device. (2)

(3) "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities. See, **MacDermid, Inc.**, 702 F.3d at 19 728 (2d Cir. 2012) [App. #14].

Under **Conn. Gen. Stat. § 53-451(a) (1 & 3)**, a computer server meets the Connecticut long-arm statute's definition of computer because it is an electronic . . . device . . . that, pursuant to . . . human instruction . . . can automatically perform computer operations with . . . computer data and can communicate the results to another computer or to a person [or is a] connected or directly related device . . . that enables the computer to store, retrieve or communicate . . . computer data . . . to or

from a person, another computer or another device. See, *MacDermid, Inc.*, 702 F.3d at 19 728 (2d Cir. 2012) [App. #14].

More pertinently in this litigation, which focuses on Harvard Medical School [HMS] defendants, BWH, MGH, & CHB, given:

- (1) Their more numerous verified and documented conspiratorial employment retributions [as presented in Table # I: *App. #5: Docket # 132, page 4*], against petitioner Dr. Rafi's qualified candidacies over these years;
- (2) The State of Connecticut and the State of Massachusetts are immediate neighbors; and
- (3) The proximity of New Haven, CT., and Boston, MA, which is merely 137 miles, the trial of BWH/MGH/HMS- defendants in New Haven, CT- will not hinder these defendants in any way to prepare for a fair trial, safeguarding their right to a fair trial under the Fourteenth Amendment. Moreover, it would in fact be convenient for BWH/MGH/HMS defendants to call witnesses, given the State of Connecticut-based co-defendants [Dr. Bale, Dr. Lifton & YSM] are the initiators and perpetrators of the alleged continuing conspiratorial vindictive employment retributions not only at BWH/MGH/HMS but also around the nation.

II. Venue Is Proper in Any District in Which an Overt Act in Furtherance of the Conspiracy Was Committed, Even Where an Overt Act Is Not a Required Element of the Conspiracy Offense.

*“Venue is proper in any district in which an overt act in furtherance of the conspiracy was committed, even where an overt act is not a required element of the conspiracy offense.” **Whitfield v. United States**, 543 U.S. 209, 218 (2005).*

“The courts should never lose sight of the strong congressional intent to eradicate discrimination in employment and to provide each aggrieved individual with the fair opportunity to obtain redress.”

*“.....Individuals to have an opportunity to raise their concerns and, where their legal rights have been invaded, a process through which they can seek redress.” **Lilly Ledbetter Fair Pay Act of 2007.***

*“Conspiracy is an “elastic,” sprawling and pervasive offense, so vague that it almost defies definition [and also] chameleon-like [because it] takes on a special coloration from each of the many independent offenses on which it may be overlaid.” **Krulewitch v. United States**, 336 U.S. 440, 69 S. Ct. 716, 93 L. Ed. 790 (1949).*

*“The crux of a conspiracy is an agreement between two or more persons to join together to accomplish something illegal.” **United States v. Flores**, 945 F.3d 687, 712 (2d Cir. 2019).*

*“Since conspiracy is an omnipresent crime, it may be prosecuted wherever an overt act is committed in its furtherance. Because conspiracy is a continuing crime, its statute of limitations does not begin to run until the last overt act is committed for its benefit.because conspiracy is a continuing offense, it may be punished when it straddles enactment of the prohibiting statute, without offending constitutional *ex post facto* principles.*

Accused conspirators are likely to be tried together, and the statements of one may often be admitted in evidence against all.

In conspiracy cases, any act or declaration by one co-conspirator committed during and in furtherance of the conspiracy is admissible against each co-conspirator. Most conspiracy convictions are based upon circumstantial evidence, and the evidence is often admitted under rather loose standards of relevance.”

See Federal Conspiracy Law: A Brief Overview. Updated

April 3, 2020. Congressional Research Service. R4122:
<https://crsreports.congress.gov>

“Wide latitude is allowed [the prosecution] in preventing evidence, and it is within the discretion of the trial court to admit evidence which even remotely tends to establish the conspiracy charged.” Nye & Nissen v. United States, 168 f.2d 846, 857 (9th Cir. 1948). Also see Whitfield v. United States, 543 U.S. 209, 218 (2005).

As alleged in Rafi’s complaint herein, conspiracy is a continuing violation. Unlike in chain- conspiracy, in *Kotteakos V. United States*, 328 U.S. 750, 66 S. Ct. 1239, 90 L. Ed. 1557 (1946), some eight or more different conspiracies of the same sort were executed “through a common key figure, Simon Brown” (*akin to Dr. Bale at Yale in Rafi’s complaint*), and all co-conspirators, along with the key figure, Brown were convicted in that case.

III. When Several Defendants Have Been Charged as Participants in A Single Conspiracy, They May Be Required to Defend Against the Charges in a Single Trial.

“When several defendants have been charged as participants in a single conspiracy, they may be required to defend against the charges in a single trial, which may present added disadvantages for the several defendants.” See Wayne R. LaFave. American Casebook Series, 2017.

Accordingly, given the proximity of Hartford, CT., to Boston, MA., there shall not be any disadvantage to HMS defendants.

“The probability of an individual defendant being convicted may be greatly enhanced by his association through joinder with the others. The basic conspiracy principle is a means of striking against the special danger incident to group activity.” See Wayne R. LaFave. American Casebook Series, 2017.

“Only ‘slight evidence’ is needed to connect a particular defendant with a proven conspiracy is commonly found in conspiracy decisions. Once the existence of a common scheme of a conspiracy is shown, slight evidence is all that is required to connect a particular defendant with the conspiracy. The connection may be shown by circumstantial evidence. A person may be held as a conspirator although he joins the criminal concert at a point in time far beyond the initial act of the conspirators. If he joins later, knowing of the criminal design, and acts in concert with the original conspirators, he may be held responsible not only for everything which may be done thereafter but also for everything which has been done prior to his adherence to the criminal design..... The fact that a conspirator is not present at or does not participate in the commission of any of the overt acts does not, by itself, exonerate him.”

See Wayne R. LaFave. **American Casebook Series, 2017.**

“Conspirators are vicariously liable for acts of their co-conspirators; each conspirator is responsible for acts of co-conspirators”:
See, **Blumenthal v. United States**, 332 U.S. 539, 557-58 (1947):

“An indictment for a conspiracy under Rev. Stat. § 5440, the fact of conspiring must be charged against all the conspirators, but the doing of overt acts in furtherance of the conspiracy may be charged only against those who committed them.”: See, **Bannon v. United States**, 156 U.S. 464,468-69 (1895) [App. #12].

In **Strassheim v. Daily** [App.#13], the Supreme Court announced that *“a state may prosecute individuals for acts committed outside a jurisdiction when the effect of the acts is the commission of a crime within the jurisdiction.”* **Strassheim v. Daily**, 221 U.S. 280, 281 (1911) [App. #13]. As alleged, in the race and class-based conspiratorial collusion with YSM faculty, Dr. Bale, Dr. Lifton, and former faculty, Dr. Pober, Harvard Medical School’s academic and research centers, BWH, MGH,

& CHB- collectively acted to commit punitive employment reprisals against Dr. Rafi's qualified candidacies over these years.

IV. Jurisdiction Is Also Proper for BWH/HMS Under 18 U.S.C. § 3237(A).

Jurisdiction is also proper for BWH/HMS under 18 U.S.C. § 3237(A). In conspiracy charges, the venue is determined under 18 U.S.C. § 3237(a). Under § 3237(a) the alleged conspirators: Yale School of Medicine and Dr. Bale, and the long-time unceasingly colluding co-conspirators at BWH/MGH/HMS [as well as the other co-conspirators around the nation]- can all be prosecuted in any district in which the conspiracy began (i.e., YSM: Dr. Lifton & Dr. Bale), continued (i.e., YSM), or was completed (i.e., BWH/MGH/HMS, and around the nation), even if any of the State of Massachusetts based co-conspirators never set foot in the State of Connecticut, as the Appellate Court has reasoned- without considering the usage of phones and emails in this modern era when one need not to physically travel to New Haven, CT (where Yale University is physically located) from Boston MA (where BWH/MGH/HMS are located) to conspire to retaliate against petitioner Dr. Rafi's candidacies at BWH/MGH/HMS, as the Appellate Court has opted to assert in its Mandate [*App. #3: Docket # 141: page 4, lines 3-6*], and in its Summary Order [*App. #8: Docket # 115: page 4, lines 3-6*].

In conspiracy cases, as alleged in this complaint, federal courts follow the theory that a phone call is an act that occurs in both the jurisdiction from which the call was placed and the jurisdiction in which the call was received and returned. See, *United States v. Caldwell*, 16 F.3d 623, 625 (5th Cir.1994): “*holding that venue was proper in the district where calls were received*”; also see *United States v. Strickland*, 493 F.2d 182, 187 (5th Cir.1974): “*upholding venue in the Northern District of Georgia on account of telephone calls made to and from Atlanta*”. Also, see:

- ***United States of America vs. Parks; Wood; Johnson; & Wood:*** Nos. 03-31098; 04-30011; 04-30012; & 04-30021, respectively, 5th Cir. (2004). *[App. #15]*;
- ***Hyde v. United States***, 225 U.S. 347, 362 (1912); &
- **State jurisdiction over interstate telephonic criminal conspiracy**, *Washington and Lee Law Review, Volume: 45 Issue: 4, Dated: (Fall 1988) Pages: 1475-1498. K. D. Kirmayer, 1988.* <https://www.ojp.gov/ncjrs/virtual-library/abstracts/state-jurisdiction-over-interstate-telephonic-criminal-conspiracy>

V. The Case Against Dr. Bale and Yale School of Medicine Should Be Allowed to Proceed Ahead.

The case against Dr. Bale & Yale School of Medicine, as the initiators and perpetrators of these alleged vindictive continuing employment retributions around the nation, should at least be allowed to proceed ahead, since preventing Dr. Rafi from working again is “***Blacklisting***”, and this action is illegal and punishable as either a civil offense or criminal offense, or both- as noted in the petition for rehearing

En Banc [App. #4: Docket # 133: pages 13-15, under titles # VII & VIII],

Moreover, the alleged *conspiracy against Rafi's civil rights as a citizen*, is indeed a criminal offense under the Federal Statute 18 U.S.C. § 241.

QUESTION # 2:

Did the Appellate Court and the District Court fail to consider the former employee's [petitioner, Dr. Rafi] allegations of continuing vindictive employment retaliations around the nation from 2015 through 2021 "by his former employer and professional training institution [Yale University School of Medicine]" disregarding this Supreme Court's binding ruling in *Robinson V. Shell Oil Company*, 519 U.S. 337 (1997)- that "former employees may sue under Title VII of the Civil Rights Act to challenge retaliation by their past employers"?

ARGUMENTS FOR QUESTION # 2

I. "... The Allegations in The Complaint Must Be Taken as True to The Extent They Are Uncontroverted by The Defendant's Affidavits."

At the outset, it should be noted that the defendants did not submit any affidavit denying any of these allegations, as the Appellate Court's Mandate and its earlier Summary Order [App. #3 & #8; Dockets # 141 & 115, respectively, at page # 3, lines 17-19]- both citing

MacDermid, Inc., v. Deiter, 702 F.3d at 19 728 (2d Cir. 2012) [App.

#14] have noted that:

“... the allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant’s affidavits.”

Notwithstanding the above Appellate Court’s assertions, petitioner Rafi additionally asserts that his allegations have been verified as true through so many prospective employers around the nation over these years in their telephonic as well as email communications with their prospective candidate Dr. Rafi over these years, and their sworn testimonials will further attest these allegations.

Therefore, petitioner Rafi’s allegations shall be considered true.

II. As a Former Employee and Professional Medical Genetics Trainee at Yale School of Medicine, Petitioner Dr. Rafi’s Allegations of Continuing Vindictive Employment Retributions by Dr. Bale Are Indeed Actionable Under US Supreme Court’s “Binding” Ruling in *Robinson V. Shell Oil Company*, 519 U.S. 337 (1997), and Under US Supreme Court’s Rulings in *Lawlor V. National Screen Service Corp.*, 349 U.S. 322 (1955).

*“Before the Supreme Court decision in *Robinson v. Shell Oil Co.*, the circuit courts struggled with whether Title VII’s anti-retaliation provision applied to current and prospective employers alone, or also*

encompassed former employees. In 1996, the Supreme Court granted certiorari in **Robinson v. Shell Oil Co.**, to resolve the circuit split”.

“The Supreme Court Decision in **Robinson v. Shell Oil Co.** not only broadly interpreted the opposition clause of Section 704(a) to protect individuals who involuntarily testify during internal investigations, but it has also bestowed broad protections on individuals, who at first glance, do not meet the precise definition of “employee” – specifically, former employees” (such as Dr. Rafi in this litigation).

As alleged in this case, “Under Section 704(a), an employer cannot discriminate against any of its “employees or applicants for employment”. Employers may also violate Section 704(a) when they coercively or vindictively block former employees’ employment prospects by providing negative reference (via telephone or email, which is “**blacklisting**”):

“If a plaintiff can establish that his or her employer engaged in some form of blacklisting as retaliation, the plaintiff may be entitled to an array of damages depending on whether he or she brings a claim under Title VII, the ADEA, or ADA. Under Title VII, a plaintiff may be entitled to back pay, front pay, compensatory damages, punitive damages, injunctive relief, and attorneys’ fees and costs, to name a few.”

[Emphasis added].

See, Title VII's Ant Retaliation Provision: Are Employees Protected After the Employment Relationship Has Ended? Sandra Tafuri. New York Law Review, Vol. 71: no 3, 791. 1996.

<https://www.nyulawreview.org/issues/volume-71-number-3/title-vii-s-antiretaliation-provision-are-employees-protected-after-the-employment-relationship-has-ended/>

Therefore, petitioner Rafi’s allegations of later newer (2015 through 2021-) continuing vindictive employment retributions by his former employer- Yale University School of Medicine / Yale University are indeed actionable per this Supreme Court’s “binding” ruling in

Robinson v. Shell Oil Company, 519 U.S. 337 (1997) [App. #10], wherein, this Court has held that former employees' retaliatory claims (*such as petitioner Rafi's claim in this litigation*) are indeed protected by **Title VII's anti-retaliation provisions.**

This Court has also held in *Lawlor V. National Screen Service Corp.*, 349 U.S. 322 (1955) [App. #11] that:

"Res Judicata Does Not Bar a Suit, Even If It Involves the Same Course of Wrongful Conduct as Alleged Earlier, So Long as The Suit Alleges New Facts or A Worsening of the Earlier Conditions."

Considering this Supreme Court's rulings in *Robinson v. Shell Oil Company*, 519 U.S. 337 (1997) [App. #10] as well as in *Lawlor V. National Screen Service Corp.*, 349 U.S. 322 (1955) [App. #11], this Supreme Court shall grant this petition for *writ of certiorari*.

III. Federal and State Courts Have Exposed Employers to Reference Suits Initiated by Former Employees, Such as Appellant Dr. Rafi.

Furthermore, Federal Courts have exposed employers to reference suits initiated by former employees, such as the petitioner, as argued in the appellant's petition for rehearing *en banc* [App. #4], as well as in his appellate brief and its appendix [*Docket # 133, page 17, title XII; and Docket # 23: Brief-Appendix # 7: pages # 134-161*].

For a review of the potential employer liability for employee references, see:

“Potential Employer Liability for Employee References,”
University of Richmond Law Review, Kyle E. Skopic, 1987,
Volume 21, Article 9.
<https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1780&context=lawreview>

Notwithstanding the federal court’s rulings about retaliation by former employers against former employees, the state courts have also affirmatively ruled in this regard. For instance, in the case of ***Psy-Ed Corp. v. Klein***, 459 Mass. 697 (Mass. 2011) [App.#16], the Massachusetts Supreme Court in addressing whether an employer’s post-employment alleged actions against a former employer could violate the State’s fair employment practices act, that court reasoned that “the statute did NOT require that an employer-employee relationship exist “at the time of wrongful conduct or at any other time”.

To reiterate, it should be noted that petitioner Dr. Rafi is a former employee of Yale University as well as a medical genetics professional board trainee at Yale School of Medicine [YSM] under the directorship of Dr. Allen Bale, Professor of Genetics, YSM. Dr. Rafi has alleged post-employment vindictive continuing “nationwide” employment reprisals by his former employer (YSM) and professional training institution (YSM), given that it is a must for Dr. Rafi’s prospective employers to contact YSM to verify his claim of professional medical genetics training in the field of clinical cytogenetics at YSM, and given that it is mandatory for his prospective employers nation-wide to contact Dr. Bale [YSM] via telephone or email gave Dr. Bale’s continued official

directorship of YSM's professional medical genetics program, as evidenced in complaint's exhibits. Dr. Bale's contact phone number, as well as his email address, are displayed on the **American Board of Medical Genetics [ABMG] official website:** <http://www.abmrg.org/pdf/Laboratory%20Genetics%20and%20Genomics%20Programs.pdf> ---which facilitates nation-wide contact with Dr. Bale at YSM. Failure to do so could lead to "**Negligent Hiring**" lawsuits against those prospective employers under the "***Tort of Negligent Hiring***" (see Docket # 23: *Brief-Appendix # 3*).

IV. Unjustifiably, the Appellate Court Mandate Overlooked the Alleged, Documented, and Verified Vindictive Ceaseless Vetoing of Former Employee & Trainee- Dr. Rafi's Nation-wide Employment Prospects from 2015/2019 Through 2021- Period as well by Dr. Bale, due to Dr. Bale's Continued Serving as the Director of Yale's Professional Medical Genetics Training Program During this Period, as Verifiably Evidenced in This Litigation.

The Appellate Court Mandate [App. #3; Docket # 141: page 6, lines 4-6] has unjustifiably concluded that "*the complaint did not specify any events that could not have been raised in the prior complaints*", by avoiding the appellant's allegations of "verified" more than 15 such specific Yale's "nation-wide latest newer [during the viable period of 2019 through 2021-] continuing employment reprisal- events" that have been admittedly docketed [App. #5 & #6] and argued in the petition for

rehearing *En Banc* [App. #4; Docket # 133], as well as in the appeal brief and its accompanying appendix [Docket # 22 & 23, respectively], and the initial complaint at the District Court.

Petitioner's specific motion [App. #5 & #6; Docket # 132] seeking the appellate court's permission to add the exhibits of Tables 1 & II: "which lists the >15 specific continuing nation-wide newer later [2019 through 2021-] alleged vindictive "third party" employment retributions by Dr. Bale [YSM]--- was granted by the Appellate Court [App. #6; Docket # 137] per petitioner's specific motion seeking Appellate Court's permission to do so [App. #5; Docket # 132].

V. Yale University and its Professional Medical Genetics Training Program Director, Dr. Bale, Who Is a Tenured Faculty, Are Collectively "Liable in Tort" Under the Restatement (Second) Of Torts §§§ 573, 558, 559 (1977) and under the "Doctrine of *Respondeat Superior*".

Yale University and its tenured faculty Dr. Bale-- are "Liable in Tort" by the Restatement (Second) Of Torts §§§ 573, 558, 559 (1977)- for their continuing defamatory "third party" vindictive vetoing of Dr. Rafi's candidacies around the nation to this day- which is partially listed in Table # II, which is admittedly attached [App. #6; Docket # 137]. and argued in the petitioner's petition for rehearing *en banc* [App. #4: Docket #133]; also see, Docket # 22: *Appellant's Brief*, and Docket # 23: *Brief- Appendix # 3*]. It should be noted that Yale University is liable by

the “**Doctrine of Respondeat Superior**”: *See, Docket # 23: Brief Appendix # 3.*

VI. The Admittedly Documented Table # II Specifically Depicts >10 Alleged Yale’s “Co-Conspiring Institutions” Around the Nation During the Relevant Viable Period of 2019 Through 2021-

Table # II [*App. #5; Docket # 132*] specifically depicts >10 alleged Yale’s “co-conspiring institutions around the nation during the relevant period of 2019 through 2021”, which is inclusive of the alleged ceaseless co-conspirator institution: Harvard Medical School [Brigham and Women’s Hospital [BWH] and Massachusetts General Hospital [MGH]].

There is “more than ample circumstantial evidence of a civil and criminal conspiracy” between Yale [Dr. Bale] and the alleged nationwide co-conspirator- institutions as depicted in Table # II [*App. #5; Docket # 132*], and therefore, petitioner Dr. Rafi’s claims should be deemed viable and substantive.

As noted above, Dr. Bale during the 2019-2021 period has been verified as having vetoed petitioner Dr. Rafi’s every medical genetics professional as well as related candidacies around the nation, when Dr. Bale was contacted via telephone and/or email seeking his recommendation for Dr. Rafi’s medical genetics candidacies, because:

[1] Dr. Rafi’s resume ought to indicate his ABMG professional clinical cytogenetics training at Yale School of Medicine, and his

concurrent professional clinical cytogenetics employment at Yale School of Medicine from 2002 through 2004 period;

[2] Any hiring University or Institution or Medical Center will be accused of “Negligent Hiring” under the “*Tort of Negligent Hiring*” if they fail to do so [*see, Docket # 23: Brief-Appendix # 3*]; and

[3] Dr. Bale’s continued (since 2002 through 2021) directorship of Yale’s ABMG training program which designated Dr. Bale as the sole contact person via telephone and/ email at Yale for the mandatory verification of Dr. Rafi’s professional clinical cytogenetics and medical genetics training and employment at Yale School of Medicine for considering his newer later (2019 through 2021-) candidacies as well around the nation: See: Petitioner’s appeal Brief-Appendix # 2: Docket # 23: appendix serial page # 13-30 therein; Also, see:

The American Board of Medical Genetics [ABMG]- website under the State of Connecticut:
<http://www.abmrg.org/pdf/Laboratory%20Genetics%20and%20Genomics%20Programs.pdf> --which displays Dr. Bale’s phone number, email address, and his address at YSM- under State of Connecticut.

This designated contact person status for Dr. Bale, as evidenced above, has ceaselessly enabled Dr. Bale to vindictively veto every one of Dr. Rafi’s highly qualified candidacies at the prospective employer-- institutions around the nation, when Dr. Bale was contacted by Dr. Rafi’s prospective employers via telephone and/or email, without the

need for those prospective employers to travel to the State of Connecticut to be a part of the alleged conspiratorial vindictive vetoing of Dr. Rafi's candidacies, as the appellate mandate [App. #3] has illogically envisioned in this modern era of telephones and emails: see the mandate [App. #3] page 4, lines 2-11], which is reproduced below:

*"Rafi argues that he made a *prima facie* showing of personal jurisdiction by alleging that the defendants were all members of a conspiracy that formed in Connecticut. The complaint did not allege facts establishing that either of the BWH defendants, residents of Massachusetts, has ever been present in Connecticut or formed a conspiracy in that state. Nor did it allege that Rafi was denied a job in Connecticut or ever resided in that state. While the complaint did allege that there was one Connecticut-based "co-conspirator institution," there were no allegations connecting either of the BWH defendants to that institution. Accordingly, because there was no allegation that the BWH defendants committed a tortious act in Connecticut, or that they committed an act causing injury to Rafi in the state, the district court properly dismissed the claims against them for lack of personal jurisdiction. *Con. Gen. Stat. §§ 33-929(f), 52-59b(a).*"*

The alleged [but verified as true through several prospective employers] continuing vindictive conspiratorial vetoing of Dr. Rafi's professional clinical cytogenetics and related medical genetics research and academic candidacies "around the nation by his former employer Yale- is indeed "wrongful intervention with former employee's prospective employment opportunities"- which is "**Blacklisting**", and it

is expressly prohibited, and it is a civil & criminal liability under “*Anti-Blacklisting Statutes*” [see, Docket # 23: Brief-Appendix # 3].

Also see:

https://www.troutman.com/images/content/4/4/v1/4446/Blacklisting_2011.pdf

BLACKLISTING:2011: for a comprehensive review of blacklisting, blacklisting statutes, and for the augmenting US Supreme Court’s rulings in the *Robinson v. Shell Oil* Decision:-

- >Intentional and Wrongful Interference; [*@ page 8*];
- >Blacklisting Statutes; [*@ page 22*];
- >Blacklisting and Its Interplay with Title VII, ADEA & the ADA; [*@ page 38*];
- >Blacklisting and Title VII in the Post-Employment Context; [*@ page 40*];
- >The *Robinson v. Shell Oil* Supreme Court Decision; [*@ page 42*];
- >Blacklisting Found Under Title VII; [*@ page 44*];
- >Blacklisting in the Employment Context Under the ADEA and ADA; [*@ page 50*]; &
- >Damages for Blacklisting Current and Former Employees. [*@ page 55*];

Accordingly, Dr. Rafi’s allegations of conspiratorial continuing professional employment retributions around the nation in this litigation are consequent to “blacklisting by his former employer and professional trainer,” i.e., *Yale University School of Medicine*, and it is a Civil Violation Under Title VII of the Civil Rights Act of 1964, and it is also a Criminal Violation Under 18 U.S. Code § 241:-Conspiracy against rights.

- “Employers aren’t always satisfied with just firing workers; they occasionally set out to keep them from getting hired elsewhere. Trying to prevent someone from working again is “blacklisting”, as defined by XpertHR. Employers and recruiters don’t openly admit to maintaining blacklists. But the practice isn’t uncommon and applies to job candidates as well as ex-employees”.
- “Blacklisting” is a civil violation under Title VII of the Civil Rights Act of 1964.
- “State blacklisting statutes, today, are closely related to state statutes prohibiting defamation. An employer’s actions, post-termination, to prevent the former employee from obtaining new employment is “blacklisting.” As a former employee, one could state a claim for both defamation and blacklisting.”
- **Code Section Connecticut General Statutes Sections 31-51:** *Blacklisting: Blacklisting or causing a worker to not get work or be hired because of something they did or are perceived as is prohibited in Connecticut.*
- **Massachusetts (Mass. Gen. Laws Ch. 149 § 19)-** *also prohibits the Blacklisting of former employees.*

An employer’s actions, post-termination, to prevent the former employee from obtaining new employment, as alleged by Dr. Rafi in this litigation, is typical “blacklisting.”

“Blacklisting has been addressed by the courts through common law claims such as defamation, slander, invasion of privacy, and intentional infliction of emotional distress.”

As has transpired in the case of Dr. Rafi in this litigation, “post-employment blacklisting is more damaging than on-the-job discrimination because an employee subject to discrimination on the job

*will often continue to receive a paycheck while a former employee subject to retaliation may be prevented from obtaining any work in the trade or occupation previously pursued", see, **Charlton v. Paramus Bd. of Educ.**, 25 F.3d 194, 200 (3d Cir. 1994).*

Interference with the employment relationship or expectancy, as alleged herein is "intentional and wrongful," as vindictive "third party" employment retributions, as alleged in this litigation by Dr. Rafi. See, **James v. Int'l Hotels Group Res., Inc.**, 2010 U.S. Dist. LEXIS, 11593 (D.Ill. 2010).; **Robinson v. Shell Oil Company**, 519 U.S. 337 (1997) [App. #10].

The alleged (*but has been verified to be true through several prospective employers over these years!*) interference with the employment relationship or expectancy effectively continues to deprive Dr. Rafi since 2015 through now from securing any employment in his professional field of clinical cytogenetics as well as in the broader medical genetics research and academic fields, where experienced candidates, such as, Dr. Rafi are in demand and highly paid for, which is evidenced in the complaint's exhibits. It should be noted that Dr. Rafi has had an extensive professional clinical cytogenetics career even before his ABMG clinical cytogenetics training at Yale, which is evidenced in his resume.

VII. Unjustifiably, the Appellate Court Mandate Has Overlooked the fact that the US Supreme Court, in a Unanimous

Decision in *Robinson V. Shell Oil Company*, 519 U.S. 337 (1997)

Has Held That “Former Employees” May Sue Under Title VII of the Civil Rights Act to Challenge Retaliation by Their “Past Employers”- Which Is the Focus of This Litigation.

The Appellate Court Mandate has overlooked the US Supreme Court’s “binding” ruling in ***Robinson V. Shell Oil Company*, 519 U.S. 337 (1997) [App. #10]**, by asserting, as follows:

*“..... Nor did it allege that Rafi was denied a job in Connecticut or ever resided in that state. While the complaint did allege that there was one Connecticut-based “co-conspirator institution,” there were no allegations connecting either of the BWH defendants to that institution. Accordingly, because there was no allegation that the BWH defendants committed a tortious act in Connecticut, or that they committed an act causing injury to Rafi in the state, the district court properly dismissed the claims against them for lack of personal jurisdiction. **Con. Gen. Stat. §§ 33-929(f), 52-59b(a).**” See, App. #3 & #8; Dockets #151, page 4, lines 5-11.*

VIII. The Appellate Court Mandate Also Seeks to Overlook the Mandatory Verification of Dr. Rafi’s Clinical Cytogenetics Employment and Professional Board Training at Yale by Any Prospective Employer by Contacting Dr. Bale “Via Telephone or Email.”

Unjustifiably, the Appellate Mandate [App. #3; Docket # 141, page 4, lines 2-11] has overlooked the logically asserted, with the ABMG website evidencing, as depicted above, mandatory [via Telephone or Email] verification contact with Dr. Bale [YSM] by Dr. Rafi’s prospective employers (particularly in the clinical diagnostic field around the nation

to protect themselves from "***Tort of Negligent Hiring***" lawsuits. This need for verification of prior professional medical genetics training work and training- indeed enabled Dr. Bale to conspire with the prospective employers to vindictively veto every one of Dr. Rafi's professional and related candidacies around the nation during the 2015-2021- period as well.

It should be noted that several prospective employers around the nation have repently affirmed that Yale's [Dr. Bale] vetoing *[via telephonic and/or email communications]* of Dr. Rafi's professional as well as related research candidacies- as their sole reason for their inability to consider Dr. Rafi's even highly desirable candidacies during 2015 through 2019, and through 2021 periods.

Additionally, Dr. Rafi has documented in the complaint's exhibits multiple phone contacts and numerous email communications concerning these allegations between him and the defendants [Dr. Lifton & Dr. Bale at YSM], as well as email communications between Dr. Rafi and Dr. Morton, Dr. Mass, and other prospective employers at BWH/MGH/HMS, as well as with prospective employers around the nation, where he had applied for in response to their vacancy advertisements in his professional field of clinical cytogenetics and medical genetics, as listed in Tables I & II *[App. #5 & #6; Docket # 132 &*

137; also see, Docket # 22: Appellant's Brief, and Appellate Docket # 23: Brief-Appendix # 3].

QUESTION # 3:

3. Did the Appellate Court and the District Court fail to consider the former employee's [petitioner, Dr. Rafi] allegations of continuing vindictive employment retaliations around the nation from 2015 through 2021 "by his former employer and professional training institution [Yale University School of Medicine]" disregarding this Supreme Court's binding rulings in [1] *Lawlor V. National Screen Service Corp.*, 349 U.S. 322 (1955)- that "*Res Judicata Does Not Bar a Suit, Even If It Involves the Same Course of Wrongful Conduct as Alleged Earlier, So Long as The Suit Alleges New Facts or A Worsening of the Earlier Conditions*", and in [2] *Robinson V. Shell Oil Company*, 519 U.S. 337 (1997)- that former employees may sue under Title VII of the Civil Rights Act to challenge retaliation by their past employers?

ARGUMENTS FOR QUESTION # 3

I. "*Res Judicata Does Not Bar a Suit, Even If It Involves the Same Course of Wrongful Conduct as Alleged Earlier, So Long as The Suit Alleges New Facts or A Worsening of the Earlier*

Conditions": Lawlor V. National Screen Service Corp., 349 U.S. 322 (1955).

By US Supreme Court's ruling in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955): [App. #11]: "Res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions."

By the ruling in *Lawlor*, the 6th Circuit has held in *State of Ohio ex rel. Susan Boggs, et al. v. City of Cleveland*, 655 F.3d 516 (6th. Cir. 2011) [App. #17] that:

"In sum, the district court erred in dismissing the 2008 action as to Fouad because the claims based upon the 2004 and 2007 expansions could not have been raised in the 2002 action and are premised on a new transaction or occurrence distinct from the subject matter of the 2002 action. For the reasons explained herein, we REVERSE the decision of the district court dismissing the action based on res judicata and REMAND to the district court for further proceedings consistent with this opinion."

By the US Supreme Court's ruling in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955) [App. #11], as well as the more recent ruling in the *State of Ohio ex rel. Susan Boggs, et al. v. City of Cleveland*, 655 F.3d 516 (6th. Cir. 2011) [App. #17], the later newer (from 2015 through 2021) continuing retaliatory employment retrIBUTions violations that have been alleged by Rafi in this litigation- [App. #5 & #6] were not even ripe during the 2014/18 period for judicial

review, and therefore these alleged later, and newer violations clearly cannot serve as a basis for any *res judicata* claim.

In the case of *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 529–30 (6th Cir. 2006), the 6th Circuit had also held that:

“Res judicata will not bar a second suit based on a contract raised a prior action when the claim subsequently raised involves a second, independent contractual breach, or when the second claim is for a continuing wrong.”

Furthermore, *Res judicata* requires, *inter alia*, a previous judgment on the merits in which the party had a full and fair opportunity to litigate the matter. Neither of those essential predicates exists in the appellant’s prior lawsuits since Rafi’s allegations in this complaint have never been fully litigated, since no discovery was ever granted, nor a trial was ever conducted.

II. “A Later Suit Alleging Similar Transactions or Occurrences After Judgment Is Clearly “Not” Based Upon the Original Cause of Action.”

A later suit alleging similar transactions or occurrences subsequent to judgment is clearly “not” based upon the original cause of action: *see App. #4: Docket # 133: Petition for rehearing En Banc: pages 18-19, title XII.*

“Where the prior action was founded upon a single transaction or occurrence, a later suit alleging similar transactions or occurrences subsequent to judgment is not based upon the original cause of action.”

Restatement, Judgments §61, comment c (1942).

III. Lastly, the Appellate Court Mandate Has Overlooked the fact that the US Supreme Court, in a Unanimous Decision in *Robinson V. Shell Oil Company*, 519 U.S. 337 (1997) Has Held That “Former Employees” May Sue Under Title VII of the Civil Rights Act to Challenge Retaliation by Their “Past Employers”- Which Is the Focus of This Litigation.

In *Robinson v. Shell Oil Company*, 519 U.S. 337 (1997) [App. #10], the US Supreme Court has unambiguously determined that:

“Former employees may sue under Title VII of the Civil Rights Act to challenge retaliation by their past employers.”

The Appellate Court Mandate has overlooked the US Supreme Court’s “binding” ruling in *Robinson V. Shell Oil Company*, 519 U.S. 337 (1997) [App. #10], by erroneously asserting, as follows:

“..... Nor did it allege that Rafi was denied a job in Connecticut or ever resided in that state. While the complaint did allege that there was one Connecticut-based “co-conspirator institution,” there were no allegations connecting either of the BWH defendants to that institution. Accordingly, because there was no allegation that the BWH defendants committed a tortious act in Connecticut, or that they committed an act causing injury to Rafi in the state, the district court properly dismissed the claims against them for lack of personal jurisdiction. Con. Gen. Stat. §§ 33-929(f), 52-59b(a).” See, App. #3: Docket # 141, page 4, lines 5-11.

CONCLUSION

Dr. Rafi petitions this Supreme Court to review and reinstate his complaint in the light of the following Supreme Court's very own rulings, which have been cited and argued above.

This Court's very own rulings in the above-cited cases contradict the rulings in the Appellate Court's Summary Judgment and Mandate, as well as the District Court's rulings in this litigation.

Wherefore, the *pro se* petitioner implores this Supreme Court to grant this petition for *writ of certiorari*, so that a jury verdict could be rendered in this litigation.

There is “more than ample circumstantial evidence of a civil and criminal conspiracy” between YSM [Dr. Bale] and the alleged nationwide co-conspirator- institutions as depicted in Tables # I & II [App. #5 & #6], and this has been extensively augmented with multiple exhibits in the complaint corroborating the alleged continuing retaliatory events.

Moreover, these allegations have also been corroborated by several prospective employers around the nation, whose testimonials would prove to the jury that the allegations of conspiratorial continuing professional employment vetoing not only at BWH & MGH [HMS] but also around the nation by his former resentful employer and professional trainee institution [Yale School of Medicine: Dr. Bale] – are entirely true.

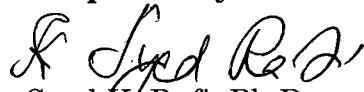
Furthermore, as argued above [*Question # 2: Argument: I*], the defendants did not submit any affidavit denying any of these allegations, as the Appellate Court's Summary Order [*App. #8: Docket # 115: page 3, lines 17-19*, as well as its Mandate [*App. #3: Docket # 141: page 3, lines 17-19*], have noted citing ***MacDermid, Inc., v. Deiter***, 702 F.3d at 19 728 (2d Cir. 2012) [*App. #14*] - that: ii“*... the allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits.*”

As noted and argued above, the alleged “Blacklisting” by the resentful former employer [YSM] is expressly prohibited, and it is civil and/or criminal liability under *Anti-Blacklisting Statutes*:
See, https://www.troutman.com/images/content/4/4/v1/4446/Blacklisting_2011.pdf

Title 18 Crimes and Criminal Procedure § 241 also prohibits these kinds of interferences with the rights of an individual that have been secured by the citizen through the United States Constitution or any other laws of the United States.

Wherefore, petitioner Dr. Rafi's claims should be deemed viable and substantive.

Respectfully submitted,



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