No. 24-1038

ORIGINAL

In The

Supreme Court of the United States

Sarsvatkumar Patel

Petitioner,

v.

Long Island University

Respondent

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

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PETITION FOR WRIT OF CERTIORARI

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Questions Presented

This case implicates unprecedented stakes in constitutional protections under the Due Process Clause of the Fourteenth Amendment and the Seventh Amendment's guarantee of a jury trial rights that Supreme Court has consistently upheld. Moreover, the lower courts have reached conflicting conclusions. In the public interest, the petitioner respectfully urges the Court to set clear standards ensuring fairness, and federal uniformity.

1. In a Title VII and FMLA discrimination and retaliation case, does denying a jury trial to a plaintiff who knowingly and voluntarily chose trial over settlement violate the Fourteenth Amendment's Due Process Clause and the Seventh Amendment guarantee of a trial by jury?

2. Does Supreme Court's review remain necessary to resolve deep and significant circuit splits regarding the proper standards for enforcing settlements, where lower courts have inconsistently enforced alleged agreements without mutual assent, a written contract, material terms, review, execution, or revocation—contradicting contract law, due process, Supreme Court precedents, and federal uniformity?

Parties to Proceeding and Related Cases

Pro Se Petitioner, Sarsvatkumar Patel, was the plaintiff-appellant below. Respondent Long Island University was the defendant-appellee below. Petitioner and Respondent participated in the proceedings in the court of appeals and district court.

Patel v. Long Island Univ., No. 17-CV-2170-NGG-SJB United States District Court for the Eastern District of New York. Judgement entered Sept. 25, 2023

Patel v. Long Island Univ., No. 23-7381 United States Court of Appeals for the Second Circuit, Judgement entered Nov. 13, 2024

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PETITION FOR WRIT OF CERTIORARI

Sarsvatkumar Patel respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

Opinions Below

The opinion of the Court of Appeals for the Second Circuit in *Patel v. Long Island University,* No. 23-7381 (Nov. 13, 2024), which affirmed the district court's order approving the respondent's settlement motion, is reported at Docket No: 23-7381 (App., A-2 to A-8). Respondent's Motion to Enforce Settlement issued by Honorable United States Magistrate Judge Sanket Bulsara is reported as Docket No. 75 of 17-cv-02170-NGG-SJB (July 31, 2023) (App., A-21 to A-44). Order adopting Report and Recommendation, by Honorable Nicholas G. Garaufis is reported as Docket No. 86 of 17-cv-02170-NGG-SJB (Sept 25, 2023) (App., A-9 to A-20).

Jurisdiction

The judgment of the court of appeals was entered on Nov. 13, 2024 (App., A-2 to A-8). A petition for rehearing was denied on Jan 3, 2025 (App., A-1). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Constitutional and Statutory Provisions

United States Constitution Seventh Amendment

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

United States Constitution Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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.

Statement

A. Legal Background

Seventh Amendment entitled respondents to a jury trial on their claims. *Chauffeurs, Teamsters & Helpers Local No. 391 v. Terry,* 494 U.S. 558, 564-65 (1990) emphasized that the right to a jury trial extends to legal claims even when intertwined with equitable relief, reinforcing the constitutional protection of jury trials in civil litigation.

Further, due process protections under the Fourteenth Amendment ensure that judicial proceedings adhere to fundamental fairness. In *Fuentes v. Shevin,* 407 U.S. 67, 80 (1972), the Court held that due process demands meaningful procedural safeguards before the government or courts deprive individuals of substantial rights, including the enforcement of agreements that significantly impact legal claims.

In *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375, 380 (1994), the Supreme Court unequivocally held that a district court's role in the

settlement process is limited to verifying that proper procedures were followed, not reexamining the merits of the settlement. The Court further clarified that federal courts lack inherent ancillary jurisdiction to enforce settlement agreements arising from federal litigation. As the Court emphasized, ancillary jurisdiction exists only if the parties' obligation is made part of the dismissal order—either through explicit incorporation of the settlement terms or via a provision retaining jurisdiction (see *Miener v. Missouri Dept. of Mental Health,* 62 F.3d 1126, 1127 (8th Cir. 1995) (quoting *Kokkonen*, 511 U.S. at 381)). Since dismissal order was never a remote possibility in this case, the district court lacked authority to enforce the settlement

The Second Circuit's framework in *Winston v. Mediafare Entertainment Corp., 777 F.2d 78 (2d Cir. 1986)*—which evaluates (1) an express reservation of the right not to be bound absent a written agreement, (2) partial performance of the contract, (3) whether all of the terms of the alleged contract have been agreed upon, and (4) whether the contract typically is memorialized in writing—reflects a holistic approach to ascertain the parties' intent.

Under the Older Workers Benefit Protection Act of 1990 ("OWBPA"), a waiver is not considered knowing or voluntary unless: (1) the individual is given at least 21 days to consider the agreement; or (2) the agreement includes a seven-day revocation period after execution before it becomes effective (*Farrel v. Title Associates, Inc.,* 03-CV-4608 (GWG), 2004 WL 5131862, at *3 (S.D.N.Y. Feb. 20, 2004) (citing 29 U.S.C. § 626(f)(1) et.

seq.)). Public policy of the EEOC, which provides guidance on understanding waivers of discrimination claims in employee severance agreements (Title VII, ADEA, 29 CFR Part 1601, 29 CFR 1625, 29 CFR Part 1626). As per the New York Civil Practice Law and N.Y. Gen. Obligations Law § 5-336, all material terms are indeed written.

B. Factual Background

Petitioner sets forth the following essential facts, which are pivotal to the questions presented. On April 10, 2017, Petitioner commenced the present action against Respondent, alleging that Respondent retaliated against him in violation of the Family Medical Leave Act ("FMLA"), and in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), New York State Human Rights Law ("NYSHRL"), and New York City Human Rights Law ("NYCHRL"). (A-3). On December 21, 2021, the parties participated in a virtual "first settlement conference" before Honorable Judge Bulsara via Microsoft Teams. The Petitioner only talked to the honorable judge in the presence of his counsel through Microsoft Teams. After several hours of verbal negotiation, opinions, statements, and arguments, the parties reached an "alleged agreement" to settle the case for a monetary sum. The entire discussion of the "first settlement conference" was about the monetary sum. Upon information and belief, the topic of confidentiality was also generally discussed and the Petitioner expressed reservations about understanding his obligations under the law before agreeing and signing anything during the "first settlement conference".

However, the scope of the confidentiality clause was not discussed in detail. Likewise, other terms typically contained in settlement agreements, such as a non-disparagement clause, or a clause precluding the Petitioner from seeking re-employment from Respondent were not discussed. The Petitioner expressed his reservations and concerns about seeing all the material terms in writing for a detailed understanding and review of the agreements. Detailed explanations of all the material terms under the agreement were not discussed at the settlement conference. At the conclusion of the conference, counsel for the parties agreed that a settlement agreement would be drafted and circulated for review and execution by the parties, and the court issued an order stating that the parties were required to file a stipulation of dismissal by January 10, 2022.

A few days after the conference, in December 2021, the Petitioner expressed reservations about the verbal settlement offer. Petitioner emailed December 24, 2021 "I will go for a trial. I am not ready for this settlement offer." The Petitioner communicated the same - "I will go for a trial" multiple times to his counsel from 21 December to 24 December.

On January 10, 2022, Ms. Stefanie Toren, Esq., counsel for Respondent, emailed Petitioner's counsel about the allocation of the settlement sum. Petitioner's counsel responded via email by writing "I am still discussing certain issues with my client. I will hopefully be in a position to get back to you guys by tomorrow or Wednesday." One of the specific issues and concerns that

the Petitioner raised with counsel following the settlement conference was the scope and nature of any proposed confidentiality clause. In particular, the Petitioner made clear that he did not want to agree to a settlement offer if he would be precluded from discussing the settlement, and the events which gave rise to the lawsuit publicly. In at least one telephone conference in January 2022, the Petitioner's counsel specifically notified the Respondent's counsel that the inclusion of a confidentiality clause was going to be problematic. During many conversations with counsel, the Petitioner reiterated and conveyed that he wanted to proceed to the jury trial (A-21).

On January 18, 2022, the Petitioner's counsel requested that the parties request an extension of the deadline to submit a stipulation of dismissal. Counsel for the parties agreed to submit a request for a 15-day extension. Respondent's counsel consented to a 15-day extension of time, which the court subsequently granted (A-21). The Petitioner made it clear that he did not want to accept the monetary offer of the alleged settlement and instead wanted to proceed to trial. Accordingly, on February 2, 2022, the Petitioner's counsel notified the Respondent's counsel that the Petitioner is no longer interested in the settlement of claims. On February 4, 2022, the parties submitted a joint letter, notifying the court that no stipulation of dismissal could be filed (A-23). No conclusion was reached after the end of the "first settlement conference".

The Petitioner presents the following selected events and minute entries to the district docket (Patel v.

Long Island University (1:17-cv-02170). Feb 11, 2022: ORDER: The Court is in receipt of the parties' letter 62. In light of the prior filings and disposition, no further summary judgment practice may be commenced. And the deadline for the filing of the joint pretrial order is deemed satisfied by the filing of Dkt. No. 28, the previously submitted joint pretrial order. So Ordered by Magistrate Judge Sanket J. Bulsara on 2/11/2022. Sep 6, 2022: ORDER: The parties are DIRECTED to confer and contact the court's Deputy at Joseph_Recoppa@nyed.uscourts.gov to schedule a pre-trial conference. Ordered by Judge Nicholas G. Garaufis on 9/6/2022.

On October 14, 2022, the Petitioner received a draft copy of the Rule 68 offer of judgment from the Respondent. The Respondent continued negotiations and made offerings. The Petitioner respectfully declined the offers and demanded a jury trial in the presence of peer jury members.

Oct 20, 2022: Minute Entry for proceedings held before Judge Nicholas G. Garaufis: Pre-trial conference held on October 20, 2022. Counsel for all parties present. The Respondent requested that the court permit the parties to engage in settlement negotiations once more before setting a date for trial. The parties agreed that no changes to the 28 Joint Pre-trial Order filed by the parties in 2018 are needed. The parties are DIRECTED to contact Magistrate Judge Bulsara's chambers to schedule a final in-person settlement conference with all parties, in addition to their counsel, present. Ordered by Judge Nicholas G. Garaufis on 10/20/2022. (Court

Reporter: Linda Danelczyk) (Abelow, Hannah) (Entered: 10/21/2022). Petitioner did not participate in the pre-trial conference held on October 20, 2022.

After 14 months of the "first settlement conference", On January 20, 2023, the parties participated in "second settlement conference" before Honorable Judge Bulsara, at the Defendant-Respondent's request. At the January 20, 2023 conference, the Petitioner made it clear to all parties and Judge Bulsara that he wanted to pursue his case at the jury trial, and was no longer interested in the settlement of his claims. Petitioner confirmed his constitutional rights of a fair jury trial with honorable Judge Bulsara at the courthouse.

Following the January 20th conference, Judge Bulsara issued an entry on the court docket that "a final resolution was not achieved." (A-23). Defendant shall file any motion to enforce the settlement reflected in the Court's order dated 12/21/2021 by 2/10/2023. So Ordered by Magistrate Judge Sanket J. Bulsara on 1/20/2023.

The petitioner felt significant judicial encouragement to settle the case and court's order provided the Respondent with an opportunity to file a motion to enforce the settlement. The Respondent's counsel stated that they would confirm with ethical obligations under the practice of the law. The Petitioner respectfully complied with court procedure in good faith and upheld shared values and integrity.

On February 21, 2023, approximately one month after the second settlement conference, Respondent filed a motion to enforce the settlement based on the verbal

opinions and statements of the "first settlement conference". On March 21, 2023, the Petitioner filed opposition to Respondent's motion to enforce. On April 5, 2023, Respondent filed reply papers supporting its motion. Honorable Judge Bulsara issued a Report and Recommendation (hereinafter "R+R") on July 31, 2023, granting Respondent's motion to enforce (A-21). On August 21, 2023, the Petitioner filed objections to R+R. On September 18, 2023, Respondent filed a response to written objections to Magistrate Judge Bulsara's R+R. On September 21, 2023, the Petitioner filed a reply memorandum of law in further support of objections to R+R. On September 25, 2023, the Petitioner filed a request leave to file a reply in further support of the objections to the R+R issued by Honorable Judge Bulsara.On September 25, 2023, the order by Honorable Nicholas G. Garaufis, adopted the R+R issued by Honorable Judge Sanket Bulsara (A-9).

Reasons For Granting The Petition

A. The Lower Court's Opinions in Direct Violation of Constitutional Mandates and Supreme Court Precedents

The record clearly demonstrates the absence of a "meeting of minds", written contract, material terms, review, absence of signed execution, and revocation period. The Petitioner received and rejected the Rule 68 offer of judgment on October 14, 2022, a few days before the joint-pre-trial conference. Petitioner consistently asserted his right to a jury trial during the "second settlement conference" and entry on the court docket says "a final resolution was not achieved" (A-23). Given

the absence of a "second settlement conference", the jury trial becomes the certain path forward. The facts on the record support this and Respondents have not provided any evidence in their support. The Respondent filed a motion to enforce the settlement solely based on the "first settlement conference", despite no conclusion being reached, as reflected in the district court docket. Under the constitutional mandates of the Seventh Amendment and the Due Process Clause of the Fourteenth Amendment, procedural fairness in contractual settlements is indispensable. This Court's precedents in *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375 (1994), *Chauffeurs, Teamsters & Helpers Local No. 391 v. Terry,* 494 U.S. 558 (1990), and *Beacon Theatres, Inc. v. Westover,* 359 U.S. 500 (1959) reaffirm that enforcing a settlement absent a clear, mutual agreement violates these fundamental rights, warranting this Court's review to ensure judicial consistency and adherence to constitutional principles.

Federal courts lack automatic ancillary jurisdiction to enforce settlement agreements in federal litigation. In *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375, 380 (1994), this Court clarified that a district court may enforce a settlement only when its terms are incorporated into the dismissal order or when the order explicitly retains jurisdiction—a principle reaffirmed in *Miener v. Missouri Dept. of Mental Health,* 62 F.3d 1126, 1127 (8th Cir. 1995). In *Caudill v. N. Am. Media Corp.,* 200 F.3d 914 (6th Cir. 2000), the court emphasized that absent compliance with the Supreme Court's mandate, a trial court lacks

jurisdiction to entertain a case involving settlement enforcement. The record clearly demonstrates the absence of a "meeting of the minds" and "a final resolution was not achieved" (A-23), making any stipulation of dismissal untenable. Respecting Supreme Court precedents and constitutional mandates, the Petitioner respectfully challenges the lower court's jurisdiction under these circumstances.

Petitioner unequivocally demonstrated that he knowingly and voluntarily chose trial over settlement of his claims, thereby affirming his constitutional rights under the Due Process Clause of the Fourteenth Amendment and the Seventh Amendment's guarantee of a trial by jury. Jurisdiction must adhere strictly to due process and constitutional safeguards. Circumventing these protections undermines judicial integrity and fundamental fairness, warranting a writ of certiorari. The following sections reveal lower court conflicts that demand Supreme Court review to resolve circuit splits, ensure uniformity, and uphold judicial consistency. Accordingly, this petition should be granted.

B. Decision from Second Circuit Is Wrong

The Second Circuit's decision is fundamentally flawed, as it enforced an alleged settlement without mutual assent, a written contract, material terms, or proper execution—contradicting established contract law and due process protections. The Respondent's motion to enforce the settlement was based solely on the "first settlement conference," despite no agreement being reached, as shown in the district court docket. The District Court granted this motion without merit,

ignoring key legal requirements. More importantly, this case presents a significant departure from established constitutional protections, where such flawed procedures erode individual rights and undermine fundamental fairness in due process. The petitioner here presented many evidences which raised a fact issue. The respondent failed to provide concrete evidence of a valid agreement, and the lower courts improperly inferred settlement, deepening circuit splits and undermining legal certainty—necessitating this Court's review. The Supreme Court holds the authority to review and address abuses of discretion by lower courts.

C. The Second Circuit's Conflicting Approach Deepens Significant Circuit Splits on the Reservation of the Right Not to Be Bound in the Absence of Writing

The Panel's opinion conflicts with the principle that parties may reserve the right not to be bound by an agreement until it is reduced to writing. This principle ensures that the intentions of the parties are clear and respected. Respondent claims that the Plaintiff did not express a reservation of rights during the settlement conference. The Petitioner disagrees, noting that there was a mutual understanding that the settlement would be memorialized in writing, reviewed, and executed before any stipulation of dismissal. Respondent's preparation of a draft settlement agreement confirms this understanding.

Relevant case law supports this position. In *Peters v. Huttell,* 15-CV-9274 (NSR), 2022 WL 1126751, at *3 (S.D.N.Y. April 15, 2022), the court held that the first

Winston factor weighed against enforcement where parties acknowledged that the "agreement would not be finalized until after the settlement was set in writing." Similarly, in *Clark v. Gotham Lasik, PLLC,* 11-CV-1307 (BSJ) (JCF), 2012 WL 987476, at *5 (S.D.N.Y. March 2, 2012), discussions about the need for a formal settlement agreement indicated an express reservation of the right not to be bound until a written agreement was executed

Had the Respondent forwarded a draft settlement agreement to the Petitioner, it would have contained standard language indicating that the parties intended to be bound upon execution. The absence of a signed agreement indicates that the Petitioner reserved his rights, as demonstrated in *Ciaremalla v. Reader's Digest Ass'n, Inc.,* 131 F.3d 320, 323 (2d Cir. 1997), where withholding a signature indicated a lack of consent. Honorable Judge Bulsara's determination, citing cases such as *Lopez v. City of New York,* 242 F.Supp.2d 392 (S.D.N.Y. 2003) and *Samuel v. Board of Education of NYC,* 2015 WL 10791896 (E.D.N.Y. Aug. 11, 2015), are distinguishable as these cases involved clear, recorded acknowledgments of settlement. No such acknowledgment exists in this case.

New York's Civil Practice Law and Rule (CPLR) 2104 requires settlement agreements to be in writing or on record in open court, further supporting the Petitioner's position. The district court's finding that an alleged agreement existed is misguided and unsupported by the facts. Appellate court have not considered this important law.

Given the above, honorable Judge Bulsara's determination that the first Winston factor weighed in favor of enforcement was erroneous. Relevant case law, including *Xie v. Caruso, Spillane, Leighton, Contrastano, Savino & Mollar, P.C.*, 632 F.Supp.3d 262, 267-68 (S.D.N.Y. 2022); *Gildea v. Design Distributors, Inc.*, 378 F.Supp.2d 158, 161 (E.D.N.Y. 2005); *Neris v. R.J.D. Construction, Inc.*, 18-CV-1701 (JS) (AKT), 2021 WL 4443896, at *5 (E.D.N.Y. Sept. 28, 2021) supports that the absence of a signed agreement indicates the first factor weighs against enforcement. Moreover, the fact the parties attended a subsequent second settlement conference with the court in January 2023 suggests that there was no "meeting of the minds" between the parties, as is required. The Petitioner received and rejected the Rule 68 offer of judgment on October 14, 2022. Accordingly, this petition should be granted.

D. The Second Circuit's Conflicting Approach Deepens Circuit Splits on the Absence of Partial Performance

The second *Winston* factor examines whether one party has partially performed and whether that performance was accepted by the party disclaiming the agreement. Respondent contends that drafting settlement documents constitutes partial performance, but this undermines their position on the first *Winston* factor, suggesting a written agreement was required before binding obligations arose. No draft agreement was ever sent to the Petitioner for review, and courts have consistently held that preparing a draft does not

constitute partial performance. Respondent also claims that refraining from further litigation constitutes partial performance. However, at that time, there was no ongoing litigation requiring action. Discovery had been closed for years, and no trial date was set. Respondent did not send a settlement payment, nor did Petitioner sign any release or stipulation, as seen in *Ciaramella v. Reader's Digest Association, Inc.*, 131 F.3d 320, 325 (2d Cir. 1997). The absence of such actions indicates that no partial performance occurred.

The Second Circuit *(Acun v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 852 F. App'x 552 (2d Cir. 2021)), underscored that partial performance is essential to validating a settlement contract. The court emphasized that without any demonstrable performance, the mere appearance of mutual assent to material terms remains insufficient to create a binding agreement. The 9th Circuit (*Facebook, Inc. v. Pacific Northwest Software, Inc.*, 640 F.3d 1034 (9th Cir. 2011)) found that partial performance was required to enforce a contract. The 7th Circuit (*Empro Mfg. Co. v. Ball-Co Mfg., Inc.*, 870 F.2d 423 (7th Cir. 1989) held that without a signed contract, parties are not bound, even with partial performance. Furthermore, the New York Civil Practice Law and Rules mandate the prompt payment of agreed settlement amounts within 21 days of an executed release and stipulation, which did not occur here. The following cases support this argument: *R.G. Group, Inc., v. Horn & Hardart Co.*, 751 F.2d 69, 75 (2d Cir. 1984); *Argyos v. Lightstone Group, LLC*, 18-CV-5142 (AJN), 2019 WL 13255545, at *3 (S.D.N.Y. Jan. 7, 2019);

Johnson v. Fordham Univ., 11-CV-4760 (ALC) (MHD), 2015 WL 13745785, at *5 (S.D.N.Y. Sept. 24, 2015); *Spencer Trask Software & Info. Services, LLC v. R Post Intern. Ltd.*, 383 F.Supp.2d 428, 443-44 (S.D.N.Y. 2003); *Peters, 2022 WL 1126751, at *3; In re Lehman Brothers Holdings, Inc.*, 17-CV-3424 (DLC), 2017 WL 3278933, at *2 (S.D.N.Y Aug. 2, 2017); *Nieves v. Community Choice Health Plan of Westchester, Inc.*, 08-CV-321 (VB) (PED), 2011 WL 5531018, at *4 (S.D.N.Y. Nov. 14, 2011); *Edwards v. City of New York*, 08-CV-2199 (FB) (JO), 2009 WL 2601311, at *4 (E.D.N.Y. Aug. 21, 2009); *Potts v. Postal Trucking Company*, 17-CV-2386 (ARR) (VMS), 2021 WL 7286599, at *8 (E.D.N.Y. Dec. 30, 2021).

Judge Bulsara's determination that the second factor was neutral was erroneous, as courts consistently rule that lack of partial performance weighs against enforcement. The September 25, 2023, order directing performance shows no prior settlement performance, making the second *Winston* factor also weigh against enforcement, warranting this petition. This section further highlights the profound circuit split that necessitates granting this petition.

E. The Second Circuit's Conflicting Approach Deepens Circuit Splits by Failing to Enforce the Requirement of Agreement on All Material Terms

The third *Winston* factor looks at whether all of the terms of the alleged contract have been agreed upon." *Peters v. Huttell,* 15-CV-9274 (NSR), 2022 WL 1126751, at *3 (S.D.N.Y. April 15, 2022). The Second Circuit has "clarified that the third *Winston* factor

should evaluate whether the parties agreed on all material terms." *Id.*, (internal citations omitted). Petitioner disputes that all material terms were agreed upon at the conference.

In *Doi v. Halekulani Corp.*, 276 F.3d 1131 (9th Cir. 2002), the court asserted that without a written agreement, purported settlements lack enforceability, underscoring the importance of documented consent. *Sargent v. HHS*, 229 F.3d 1088, 1090 (Fed. Cir. 2000), the court held that absent a written record of all material terms, an alleged settlement agreement lacks the clarity and evidentiary support necessary for enforceability. *Lynch, Inc. v. SamataMason Inc.*, 279 F.3d 487 (7th Cir. 2002), highlighted that a written contract is required to ensure clarity and mutual assent on all material terms.

In the R+R, the court focuses primarily on confidentiality and opined that because the Petitioner's counsel did not include in his declaration a specific reference to his discussion with his client regarding the specific topic of confidentiality suggests that "he and Patel never actually discussed confidentiality or even the written agreement with LIU's counsel." (A-35). This is false. The Petitioner's counsel did, in fact discuss the topic of confidentiality with the Petitioner, at length. (A-35). Indeed, the very first concern raised by the Petitioner during and following the December 2021 settlement conference was confidentiality. (*Id.*) The Petitioner made clear that he would not sign any document which prohibited, or precluded him, in any way, from discussing the events giving rise to the

litigation. Confidentiality is a material term; the finding is erroneous and in violation of N.Y. Gen. Obligations Law § 5-336.

Moreover, in the R+R, the court found that because Plaintiff "backed out of the agreement without even asking for LIU's proposed written agreement," he cannot establish the existence of changes in the post-settlement writing process. (A-35). However, that fact only underscores the weight of the first factor – which is that the Petitioner did not intend to be bound by the oral agreement reached at the December 21, 2021 conference without review, signing a written agreement containing all of the key details and terms, which had not been addressed or negotiated. The Petitioner did not agree to all material terms at the December 21, 2021 conference. In short, all material terms were not agreed to at the December 2021 settlement conference. Accordingly, Honorable Judge Bulsara's finding that the third factor weighed in favor of enforcement was misguided. The panel majority took a conflicting approach. The Petitioner respectfully requests that this Court grant a writ of certiorari to resolve significant conflicts among lower courts and ensure uniform application of the Constitutional standards and law.

F. Panel Opinion Deepens Circuit Split by Failing to Enforce "Writing" Requirements and Established Contract Law Precedents

It is well established that "settlements of any claim are generally required to be in writing, or at a minimum, made on the record, in open court" (*Ciaramella,* 131 F.3d at 326). Specifically, "a settlement

of an employment discrimination claim is customarily reduced to writing, particularly when the terms of the settlement have not been announced on the record in open court" (*Abel, 2010 WL 5347055, at *5*).

During the settlement conference before Honorable Judge Bulsara, the parties did not represent their assent to the terms of the settlement in open court, nor was their agreement ever reduced to writing. Courts have consistently declined to enforce such settlements in similar circumstances (*Clark v. Gotham Lasik, PLLC,* 11-CV-1307 (BSJ) (JCF), 2012 WL 987476, at *5 (S.D.N.Y. March 2, 2012*; Cornelius v. Independent Health Association Inc.*, 912 F.Supp.2d 26, 32 (W.D.N.Y. 2012). The court's determination that the fourth Winston factor favors enforcement is incorrect. The court acknowledged that agreements of this type are typically written (A-41). The agreement reached at the December 21, 2021, conference was not made in open court or placed on the record. In *Gromulat v. Wynn,* 20-CV-10490 (VB), 2022 WL 445779, at *4 (S.D.N.Y. Feb. 14, 2022), the court found the fourth factor weighed against enforcement, especially where no written term sheet was executed.

Other cases support this view. *In Green v. New York City Transit Auth.,* 15-CV-08204 (ALC) (SN), 2022 WL 2819738, at *4 (S.D.N.Y. May 10, 2022), the court found the fourth factor leaned against enforcement for discrimination claims. In *Fernandez v. HR Parking Inc.,* 577 F.Supp.3d 254, 261 (S.D.N.Y. 2021), the court noted that the fourth factor weighs heavily against enforcement because such agreements are almost

always in writing. The Second Circuit also asserted written requirement in *Philana Murphy, v. Institute of International Education,* 20-3632-cv, Document 62, (2d Cir, 2022). Based on this, the fourth Winston factor clearly weighs against enforcement, contrary to Honorable Judge Bulsara's determination. The panel's decision conflicts with established legal principles and other circuits court precedents, warranting Supreme Court's review through a grant of certiorari.

G. Panel Decision Creates Circuit Split, Conflicts with Constitutional Rights, Contract Law, and Undermines Legal Certainty

The record establishes the following undisputed facts: (i) The petitioner-plaintiff knowingly and voluntarily invoked his constitutional rights, expressly choosing to proceed to trial rather than accept settlement; (ii) Two settlement conferences failed to yield a resolution, demonstrating the absence of mutual agreement between the parties; (iii) The respondent-defendant was the sole party advocating for settlement, persistently engaging in negotiations and making settlement offers throughout the proceedings; and (iv) It is undisputed that the District Court also expressed a preference for settlement. However, the petitioner's constitutional right to trial cannot be overridden by judicial or opposing party preferences, reinforcing the fundamental principle that settlement must be the product of mutual consent, not coercion or undue pressure.

The decisions in *Bell v. Schexnayder,* 36 F.3d 447 (5th Cir. 1994); *Neuberg v. Michael Reese Hosp. Found.,*

123 F.3d 951 (7th Cir. 1997), *McAlpin v. Lexington 76 Auto Truck Stop*, 229 F.3d 491, 502-03 (6th Cir. 2000), and *Caudill v. N. Am. Media Corp.*, 200 F.3d 914 (6th Cir. 2000) directly contradict rulings, creating a split in the circuits, regarding the enforcement of settlements and constitutional protections, particularly under the Due Process Clause and the Seventh Amendment's guarantee of a jury trial. This Court's intervention is necessary to clarify the proper standards for enforcing settlements and ensure consistent application of constitutional rights across federal circuits. Granting certiorari is essential to restore uniformity and safeguard fundamental rights.

The panel's ruling violates fundamental contract law and Supreme Court precedent by enforcing an alleged oral settlement without the requisite written agreement, mutual consent, or clarity. In doing so, it disregards key New York statutory mandates—specifically, Civil Practice Law and Rule 2104 and N.Y. Gen. Obligations Law § 5-336—and undermines the plaintiff's constitutional rights to due process and a fair trial. This decision erodes legal certainty and public confidence, making it imperative for this Court to grant certiorari to correct these errors and reaffirm adherence to both constitutional principles and established state and federal laws.

H. Panel Opinion Conflicts with Age Discrimination in Employment Act ("ADEA"), Older Workers Benefit Protection Act of 1990 ("OWBPA"), Established Judgments, and Public Policy

The scope of a general release would include age discrimination claims under the Age Discrimination in Employment Act ("ADEA"), as the Petitioner was over 40 years old at the time of the December 2021 conference. Under the Older Workers Benefit Protection Act of 1990 ("OWBPA"), a waiver is not considered knowing or voluntary unless: (1) the individual is given at least 21 days to consider the agreement; or (2) the agreement includes a seven-day revocation period after execution before it becomes effective (*Farrel v. Title Associates, Inc.*, 03-CV-4608 (GWG), 2004 WL 5131862, at *3 (S.D.N.Y. Feb. 20, 2004) (citing 29 U.S.C. § 626(f)(1) *et. seq.)*). Thus, even if the Petitioner had been given a written settlement agreement and executed it, he would have had seven days to revoke his signature.

Respondent's actions violate the public policy of the EEOC, which provides guidance on understanding waivers of discrimination claims in employee severance agreements (Title VII, ADEA, 29 CFR Part 1601, 29 CFR 1625, 29 CFR Part 1626). A waiver in a severance agreement is valid only when an employee knowingly and voluntarily consents. Any provision attempting to waive these rights is invalid and unenforceable (*Morrison v. Circuit City Stores,* 317 F.3d 646 (6th Cir. 2003)*; Warnebold v. Union Pac. R.R.*, 963 F.2d 222 (8th Cir. 1992).

Respondent violated New York Civil Practice Law and Rules. The final order (Sept. 25, 2023, A-20) confirms that no performance occurred, proving no binding agreement exists and violating N.Y. Gen. Obligations Law § 5-336, which mandates written material terms. While federal courts typically enforce these state laws, this case is an exception where they were overlooked.

Conclusion

Supreme Court intervention is urgently needed to establish clear, enforceable rules that protect constitutional rights in settlement proceedings. The current framework lacks guidance, from both the Court's common law decisions and congressional statutes, causing constitutional violations of due process and the Seventh Amendment. Given its authority under the Federal Rules of Civil Procedure, Supreme Court can ensure settlement enforcement aligns with fundamental contract principles. The petitioner urges the Court to implement measurable standards that uphold fairness, prevent inconsistencies, and strengthen judicial integrity. Moreover, by clarifying and standardizing these procedures, such reforms will expedite litigation and provide prompt, just, efficient resolutions. Given the significant constitutional and legal issues presented in this case, Petitioner respectfully requests that this Court invite amicus curiae participation.

2nd Circuit's decision conflicts with the decisions of all other circuit courts, including many of 2nd circuit's own judgements. The circuit split on this issue is leading to confusion and inconsistent application of the law,

which affects the legal landscape at both the trial and appellate levels. This divergence results in disparate legal standards that undermine constitutional amendments and consistent application of the law.

The lower Court's order must be reversed to uphold constitutional protections, due process, and established contract law. The result will be a trial that ensures both parties have an equal opportunity to present their case, setting a new standard for discrimination and retaliation claims under Title VII and FMLA. The petitioner, a steadfast defender of individual rights, has raised this challenge to ensure that plaintiff-friendly constitutional guarantees are rigorously enforced, thereby affirming the rule of law. This case offers a critical opportunity to provide the badly needed clarity, as the decision below deepens the existing conflict among the lower courts. Accordingly, the Petitioner respectfully but firmly requests that this Court grant the writ of certiorari.

Respectfully Submitted,

s/ Sarsvatkumar Patel
Sarsvatkumar Patel, *Pro Se*, Petitioner
Date: 03-24-2025, Royersford, PA