

No. 22-539

**In The
Supreme Court of the United States**

JULIET ANILAO, MARK DELA CRUZ,
CLAUDINE GAMAIO, ELMER JACINTO,
JENNIFER LAMPA, RIZZA MAULION,
THERESA RAMOS, HARRIET RAYMUNDO,
RANIER SICHON, JAMES MILLENA, and
FELIX Q. VINLUAN ,

Petitioners,

v.

THOMAS J. SPOTA, III, et al.,

Respondents.

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

**BRIEF OF AMICI CURIAE
FREEDOM NETWORK USA & THE HUMAN
TRAFFICKING LEGAL CENTER
IN SUPPORT OF PETITIONER**

NATHANIEL G. FOELL
CARLTON FIELDS, P.A.
4221 W. Boy Scout Blvd.,
Ste. 1000
Tampa, FL 33607
(813) 229-4188
nfoell@carltonfields.com

MICHAEL L. YAEGER
Counsel of Record
CARLTON FIELDS, P.A.
405 Lexington Ave., 36th Fl.
New York, NY 10174
(212) 785-2577
myaeger@carltonfields.com

i
CONTENTS

| | |
|--|----|
| AUTHORITIES | ii |
| INTEREST OF AMICI CURIAE | 1 |
| SUMMARY OF ARGUMENT | 2 |
| ARGUMENT..... | 4 |
| I. The Second Circuit’s Decision Ignores Section 1983’s Stated Commitment And Basic Purpose Of Compensating Victims..... | 4 |
| II. This Case Illustrates The Cost Of Ignoring Section 1983’s Stated Commitment And Basic Purpose..... | 8 |
| CONCLUSION | 14 |

ii
AUTHORITIES

| Cases | Page |
|---|------|
| <i>Belvis v. Colamussi</i> , 2018 WL 3151698 (E.D.N.Y. Feb. 20, 2018) | 13 |
| <i>Carey v. Piphus</i> , 435 U.S. 247 (1978) | 6 |
| <i>Felder v. Casey</i> , 487 U.S. 131 (1988) | 6, 7 |
| <i>Imbler v. Pachtman</i> , 424 U.S. 409 (1976) | 5 |
| <i>Leiva v. Clute</i> , 2020 WL 8514822 (N.D. Ind. Dec. 16, 2020) | 13 |
| <i>Memphis Cmty. Sch. Dist. v. Stachura</i> , 477 U.S. 299 (1986) | 5–6 |
| <i>Nunag-Tanedo v. E. Baton Rouge Par. Sch. Bd.</i> , 790 F. Supp. 2d 1134 (C.D. Cal. 2011)..... | 13 |
| <i>Paguirigan v. Prompt Nursing Employment Agency LLC</i> , 2019 WL 4647648 (E.D.N.Y. Sept. 24, 2019) | 9 |

Pembaur v. City of Cincinnati,
475 U.S. 469 (1986) 6

Ruiz v. Fernandez,
949 F. Supp. 2d 1055 (E.D. Wash. 2013)..... 13

Statutes

42 U.S.C. § 1983 5

18 U.S.C. § 1589 9, 10

Constitution

U.S. Const. Amend. 13 2, 5, 11

U.S. Const. Amend. 1 11

STATEMENT OF INTEREST¹

Amici curiae are U.S.-based organizations that advocate for survivors of all types of human trafficking, including forced labor.

Freedom Network USA is the country's largest alliance of advocates against human trafficking. Its members provide legal and social services to trafficking survivors, serving over 2,000 trafficking survivors every year in over forty cities. Through these efforts, Freedom Network USA has developed expertise regarding the experiences and concerns of trafficking survivors, many of whom are immigrants.

The Human Trafficking Legal Center seeks justice for trafficking survivors and accountability for traffickers. The organization provides a bridge between skilled pro bono attorneys and trafficking survivors seeking justice, having trained more than 5,000 pro bono attorneys to handle civil, criminal, and immigration human trafficking cases. The Human Trafficking Legal Center also has obtained multiple T-visas for trafficking survivors, as well as significant civil judgments and criminal restitution in federal cases.

¹ No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than amici curiae, their members, or counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for Petitioners received timely notice of amici curiae's intent to file this brief; counsel of record for Respondents received eight days notice, rather than the 10 specified by Supreme Court Rule 37.2. Counsel for amici regret the oversight.

Both Freedom Network USA and The Human Trafficking Legal Center have submitted amicus briefs in other cases related to human trafficking, including cases in this Court.

This case relates to human trafficking because all the Petitioners save one are nurses (the Nurse Petitioners) who endured forced labor at the hands of their employer and, as a New York state appellate court found, were wrongfully prosecuted in violation of the Thirteenth Amendment. In addition, in a separate case, a federal court found that the same employer violated the Trafficking Victims Protection Act in a suit filed by a class of nurses similarly abused after the Nurse Petitioners escaped. The harm of the Nurse Petitioners' forced labor was then compounded by the actions of Respondents, who prosecuted the Nurse Petitioners for nothing more than quitting their jobs. The prosecution of the Nurse Petitioners, initiated at the urging of their former employer and its politically-connected attorney, caused significant harm to the Nurse Petitioners. Amici advocate for the interests of human trafficking survivors like the Nurse Petitioners. Here, amici urge this Court to allow the Nurse Petitioners to obtain a remedy under Section 1983.

SUMMARY OF ARGUMENT

It's not every day a court holds that a prosecutor has violated the Thirteenth Amendment. But it happened here: a New York appellate court issued a writ of prohibition halting Respondents' prosecution of the Nurse Petitioners. The court did so for the extraordinary reason that Respondents' prosecution violated "the constitutional prohibition against

involuntary servitude” and was thus “an impermissible infringement upon the constitutional rights of these nurses.” App. 248a–249a.

When such a constitutional violation occurs and the victims seek redress under Section 1983, as Nurse Petitioners did, they should be compensated for their injuries: arrest and detention; legal fees and costs incurred in defending themselves; inability to obtain work due to the prosecution; and physical and mental harms. Here, however, a divided Second Circuit panel held that because of absolute prosecutorial immunity the Nurse Petitioners could not be compensated under Section 1983.

As consolation to the victims, the panel majority observed that the absolute immunity of prosecutors “does not render the public powerless” because the public could pursue “criminal and professional sanctions.” App. 12a n.3. But the reasons the Nurse Petitioners were especially vulnerable to abuse by their employer and Respondents—their immigration status, their lack of family and community ties, and so on—are also reasons why they had little ability to press for criminal or professional sanctions against Respondents. To state and local politicians they are strangers. And even in cases where criminal or professional sanctions *are* imposed on a prosecutor and contribute to general deterrence, such sanctions do nothing to compensate that prosecutor’s past victims. Yet that is precisely what Section 1983 is supposed to do: compensate people whose constitutional or other federal rights have been violated.

When Congress passed the Ku Klux Klan Act of 1871, the precursor to Section 1983, Congress gave protection to individuals who lack influence in state and local politics—individuals like the Nurse Petitioners. Congress did so by enacting text that expressly encompasses the ability to bring an action at law, an action in which the classic remedy is damages. The Second Circuit panel majority ignored that stated commitment and basic purpose of Section 1983.

The result sends a troubling message: abuse of legal process—a typical tactic employed by human traffickers—works. That is, the panel majority’s decision not only precludes the Nurse Petitioners’ recovery, but also ensures the success of the employer’s strategic abuse of the legal process. While the Nurse Petitioners were not convicted of any crime, the wrongful prosecution sends a powerful message to all victims about the costs of standing up to their traffickers. Threatening forced laborers with arrest, deportation, or other legal consequences has a powerful *in terrorem* effect. In this case, the traffickers’ threat was not empty. The Nurse Petitioners’ employer succeeded in carrying out the threat of arrest and prosecution. Respondents should not be immune from liability for making that happen.

ARGUMENT

I. The Second Circuit’s Decision Ignores Section 1983’s Stated Commitment And Basic Purpose Of Compensating Victims.

In this case a divided Second Circuit panel held, with evident discomfort and over a strong dissent, that Respondents were absolutely immune from liability

for a prosecution that a New York appellate court found violated the Thirteenth Amendment to the U.S. Constitution. The panel majority recognized that the result of its especially strong version of absolute prosecutorial immunity “may be that a wronged plaintiff is left without an immediate remedy.” App. 12a. It rationalized this result by observing that “absolute immunity does not render the public powerless” because there are “other methods, such as criminal and professional sanctions, to deter and redress wrongdoing.” App. 12a n.3. This observation ignores the text and basic purpose of Section 1983.

Notably, this Court relied on a similar observation when it decided *Imbler v. Pachtman*, 424 U.S. 409, 428–29 (1976), the case that established the doctrine of absolute prosecutorial immunity under Section 1983. That the observation ignores the text and basic purpose of Section 1983 thus adds to the reasons Petitioners have provided for reconsidering absolute prosecutorial immunity.

Section 1983 provides that any person acting under color of state law who violates someone’s federal rights “shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]” 42 U.S.C. § 1983. It is our country’s stated commitment to compensating those whose constitutional or other federal rights have been violated.

This Court has repeatedly recognized that Section 1983 means what it plainly says. The Court has affirmed that “the basic purpose of § 1983 damages is to compensate persons for injuries that are caused by the deprivation of constitutional rights.” *Memphis*

Cnty. Sch. Dist. v. Stachura, 477 U.S. 299, 307 (1986) (citation, emphasis, and internal quotation marks omitted). See also *Felder v. Casey*, 487 U.S. 131, 141 (1988) (“[T]he central purpose of the Reconstruction-Era laws is to provide compensatory relief to those deprived of their federal rights by state actors.”); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986) (“To deny compensation to the victim would * * * be contrary to the fundamental purpose of § 1983.”); *Carey v. Piphus*, 435 U.S. 247, 258 (1978) (“The purpose of § 1983 would be defeated if injuries caused by the deprivation of constitutional rights went uncompensated[.]”).

The Court has also recognized that Section 1983 must be applied in line with its purpose of compensating victims. In *Felder*, for example, the Court considered whether a Wisconsin notice of claim statute could bar a Section 1983 claim filed in Wisconsin state court. *Felder* held that the state law could not bar the federal claim, for the following reason:

In enacting § 1983, Congress entitled those deprived of their civil rights to recover full compensation from the governmental officials responsible for those deprivations. A state law that conditions that right of recovery upon compliance with a rule designed to minimize governmental liability, and that directs injured persons to seek redress in the first instance from the very targets of the federal legislation, is inconsistent in both purpose and effect with the remedial objectives of the

federal civil rights law. Principles of federalism, as well as the Supremacy Clause, dictate that such a state law must give way to vindication of the federal right when that right is asserted in state court.

Felder, 487 U.S. at 153.

The teaching of *Felder*, as well as the other cases cited above, is that Section 1983 must be applied in a manner that does justice to its “compensatory aims.” *Id.* at 140.

The Second Circuit’s decision in this case does not do justice to Section 1983’s compensatory aims. In at least one important respect the decision ignores them altogether. When the panel majority attempts to address the concern that its especially strong version of absolute prosecutorial immunity leaves wronged plaintiffs without a remedy, it says that prosecutorial misconduct can be deterred by “criminal and professional sanctions.” App. 12a. But that observation does not so much address the concern as change the subject. Deterring future prosecutorial misconduct is one thing, and compensating the victims of past prosecutorial misconduct is another. The imposition of Section 1983 liability could potentially accomplish both, but the imposition of criminal or professional sanctions cannot. At best, such sanctions deter some future prosecutorial misconduct but leave

the victims of past prosecutorial misconduct uncompensated.²

The policy behind the Second Circuit's decision is that federal courts can have their cake and eat it too: they can attain the benefits of absolute prosecutorial immunity without slighting the purpose of Section 1983, because that purpose can somehow be achieved by criminal and professional sanctions instead of by damages awards. But that is not true, as amici have now shown. Criminal and professional sanctions on rights-violating prosecutors do nothing to serve Section 1983's compensatory aims. The seemingly reasonable policy behind absolute prosecutorial immunity invites the question of why a judicial policy choice should override a statute. Moreover, the policy appears much less reasonable on closer inspection, as it ignores the basic purpose of Section 1983 altogether.

II. This Case Illustrates The Cost Of Ignoring Section 1983's Stated Commitment And Basic Purpose.

All but one of the Petitioners are nurses and immigrants. They were recruited from their native Philippines to work for Sentosa Care (Sentosa), a large and politically-connected New York nursing home operator. App. 5a, 56a, 150a. Upon arriving in New York, the Nurse Petitioners quickly realized that

² There is room to doubt whether criminal and professional sanctions against rights-violating prosecutors are as effective at deterring prosecutorial misconduct as Section 1983 liability would be, in part because prosecutors are rarely charged or disciplined for their misconduct. *See* Pet. for a Writ of Cert. 36 n.6. Regardless, the fact remains that criminal and professional sanctions against rights-violating prosecutors do not compensate their victims.

Sentosa was not honoring its contracts with them. Their pay and benefits were lower than promised. App. 147a–148a. Their housing was substandard and overcrowded. *Id.* Most problematic, if they quit their jobs before working three years for Sentosa, they faced the possibility of having to pay Sentosa a \$25,000 penalty. App. 5a, 147a.

That is a recipe for forced labor. Indeed, it is part of a pattern with Sentosa. Other nurses that Sentosa recruited from the Philippines (just two years after the Nurse Petitioners were recruited) filed a class action alleging forced labor. The federal court adjudicating that case found that Sentosa violated the Trafficking Victims Protection Act by obtaining the labor of those nurses through “threats of serious harm” and “abuse or threatened abuse of law or legal process.” 18 U.S.C. § 1589(a). *See Paguirigan v. Prompt Nursing Employment Agency LLC*, 2019 WL 4647648, at *15–19 (E.D.N.Y. Sept. 24, 2019), *aff’d in part, appeal dismissed in part*, 827 Fed. Appx. 116 (2d Cir. 2020).

A similar dynamic was at work between the Nurse Petitioners and Sentosa. The Nurse Petitioners first attempted to address that dynamic by voicing their grievances to Sentosa. When that attempt was unsuccessful, the Nurse Petitioners consulted an attorney recommended to them by the Philippine Consulate. That attorney is their fellow Petitioner (the Attorney Petitioner). App. 5a, 36a–37a.

The Attorney Petitioner advised the Nurse Petitioners that they could resign their at-will jobs because Sentosa had breached its contracts with them. He instructed the nurses that they could not resign

during a shift. *Id.* The Nurse Petitioners followed his advice and resigned with ample notice. App. 252a.

Sentosa then worked to ensure that no other non-citizen nurses in its employ, now or in the future, would have the temerity to do what the Nurse Petitioners did. Sentosa pursued that mission through their familiar tactic of “abuse or threatened abuse of law or legal process.” 18 U.S.C. § 1589(a). Sentosa complained about the Nurse Petitioners to the New York State Education Department’s Office of the Professions, which licenses nurses, and to the Suffolk County Police Department. App. 252a. Both entities concluded that the Nurse Petitioners engaged in no wrongdoing, and in particular that they did not endanger patients. App. 6a, 37a, 139a, 252a.

Sentosa also filed a lawsuit seeking an injunction that would prevent the Attorney Petitioner from speaking to any of its employees. The court denied that relief, finding that Sentosa was unlikely to succeed on the merits. App. 37a, 139a.

After failing to spark retaliation against the Petitioners, Sentosa finally found a receptive audience willing to take action against Petitioners: Respondents, including the Suffolk County District Attorney’s Office, an assistant district attorney, and the district attorney himself. Respondents indicted Petitioners for endangering patients and conspiring to do so. App. 7a. Respondents also indicted the Attorney Petitioner for criminal solicitation, with the stated basis for that charge being that he met with the Nurse Petitioners to discuss their situation. *Id.*

A New York appellate court granted a writ of prohibition that put an end to this egregious abuse of prosecutorial power. The court found that the prosecution of the Nurse Petitioners violated the Thirteenth Amendment to the U.S. Constitution, App. 261a–262a, and that the prosecution of the Attorney Petitioner violated the First Amendment to the U.S. Constitution, App. 265a–267a.

Armed with that finding, Petitioners filed suit against Respondents. Petitioners maintained that because Respondents violated their rights by prosecuting them for conduct plainly protected by the U.S. Constitution, they were entitled to compensation under Section 1983. A divided Second Circuit panel held that Respondents enjoyed absolute immunity from Section 1983 liability for their prosecutorial actions. App. 10a, 14a–20a. Plaintiffs therefore have received no compensation for the injuries Respondents inflicted on them.

Those injuries are considerable. In their Amended Complaint against Respondents, the Nurse Petitioners allege that they were arrested and detained. *See* Amended Complaint, Anilao v. Spota, Case No. 2:10-cv-00032-FB-AKT, Doc. 23 ¶ 120 (E.D.N.Y.). They allege that they had to incur legal fees and costs defending themselves. *Id.* ¶ 118. They allege that they were unable to obtain work as nurses. *Id.* ¶ 117. And they allege that they suffered both physically and mentally. *Id.* ¶ 119.

Those allegations are, of course, not merely plausible—they are almost certainly true. Being arrested and detained is both humiliating and terrifying. Mounting a criminal defense is, among

other things, expensive. Obtaining work as a nurse is difficult, if not impossible, when one has been indicted for “endangering patients” and conspiring to do so. Doing so as a stranger to the country without a network of friends and family nearby is harder still. “This is the stranger’s case; and this [the] mountainish inhumanity”³ of absolute immunity.

Providing compensation for injuries like the Nurse Petitioners’ is the stated commitment and basic purpose of Section 1983, as established above, and the Second Circuit ignored that core principle when it offered criminal and professional sanctions as the solution to the problem of absolute immunity for prosecutorial misconduct. To be sure, it is laudable when prosecutorial misconduct is met with criminal or professional sanctions. But that does nothing to compensate the victims of the misconduct, who may have suffered greatly. The Nurse Petitioners certainly did.

Perhaps most troubling is the realization that because of absolute prosecutorial immunity, Sentosa’s strategy worked. Unless this Court intervenes, Petitioners will not be made whole for the injuries they suffered from standing up to Sentosa. Non-citizen nurses working for Sentosa and other companies like it have no doubt taken note of this fact. So while the prosecution Sentosa urged Respondents to undertake did not lead to any convictions, it still largely achieved

³ Act 2, Scene 4, *Sir Thomas More*, in a speech widely credited to William Shakespeare, available at <https://www.playshakespeare.com/sir-thomas-more/scenes/act-ii-scene-4>. For a recitation, see https://m.youtube.com/watch?v=afK_bXD7pMo&pp=QAFIAQ%3D%3D.

what Sentosa was hoping to accomplish: intimidation of vulnerable people held in forced labor.

Sentosa is far from the only company to employ this strategy. Traffickers often threaten their victims with arrest, deportation, or other legal consequences. *See, e.g., Belvis v. Colamussi*, 2018 WL 3151698, at *3–4 (E.D.N.Y. Feb. 20, 2018); *Leiva v. Clute*, 2020 WL 8514822, at *5–6 (N.D. Ind. Dec. 16, 2020), *report and recommendation adopted*, 2021 WL 307302 (N.D. Ind. Jan. 29, 2021); *Ruiz v. Fernandez*, 949 F. Supp. 2d 1055, 1076–78 (E.D. Wash. 2013), *order clarified*, 2013 WL 12167930 (E.D. Wash. June 24, 2013); *Nunag-Tanedo v. E. Baton Rouge Par. Sch. Bd.*, 790 F. Supp. 2d 1134, 1143–46 (C.D. Cal. 2011). What makes this case especially egregious is that Sentosa succeeded in carrying out that threat. Respondents should not be immune from liability for making that happen.

CONCLUSION

For the foregoing reasons, as well those advanced by Petitioners, Freedom Network USA and The Human Trafficking Legal Center respectfully request that the Court grant the petition for writ of certiorari.

Respectfully submitted,

MICHAEL L. YAEGER
Counsel of Record
CARLTON FIELDS, P.A.
405 Lexington Ave., 36th Fl.
New York, NY 10174
(212) 785-2577
myaeger@carltonfields.com

NATHANIEL G. FOELL
CARLTON FIELDS, P.A.
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, FL 33607
(813) 229-4188
nfoell@carltonfields.com

January 12, 2023