

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 18-3472; 12-4764-cv; and 18-1343

Caption [use short title]

Motion for: Court Order to Submit Oversize Brief for Reinstate/Recall Mandate motion in Gayle v. Harry's Nurses Registry, Inc. (HNR) and Harry Dorvilier (18-3472); Isigi v. Dorvilier, Harry's Nurses Registry (18-1343) and Gayle v. HNR (12-4764)

Set forth below precise, complete statement of relief sought: Leave to Submit Oversize Brief to support reinstate/recall motion relating to (1) the Summary Order Mandate issued 02/14/2020 in Gayle v. HNR and Dorvilier (18-3472), referenced above; (2) the Summary Order Mandate issued 02/07/2020 in Isigi 18-1343), referenced above; and (3) the Mandate issued 07/06/2011 in Gayle v. HNR (12-4764) referenced above

Gayle/Isigi v. HNR and Harry Dorvilier

MOVING PARTY: HNR and H. Dorvilier OPPOSING PARTY: Gayle, et. al; and R. Isigi

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: George A. Rusk, Attorney at Law 70 Lamarck Drive, Snyder, NY 14226 716-864-8373/716-839-3569; GeorgeRuskAtt@outook.com OPPOSING ATTORNEY: Jonathan A. Bernstein Meenan & Associates, LLC, 299 Broadway, Suite 1310, NYC, NY 10007 212-226-7334

Court- Judge/ Agency appealed from: Winter, Hall, Cote Summary Order Mandate (2/14/2020); Jacobs, Carney, Park Summary Order Mandate (02/07/2020); \*\*

Please check appropriate boxes: Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL: Has this request for relief been made below? Has this relief been previously sought in this court? Requested return date and explanation of emergency:

Opposing counsel's position on motion: Unopposed Opposed Don't Know Does opposing counsel intend to file a response: Yes No Don't Know

\*\* Jjacobs, Winter, Parker Amended Order Mandate (07/06/2011)

Is oral argument on motion requested? Has argument date of appeal been set?

Signature of Moving Attorney: Date: 1/12/2021 Service by: CM/ECF Other [Attach proof of service]

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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CLAUDIA GAYLE, Individually and  
On Behalf of All Others Similarly Situated  
and as Class Representative, et. al.  
Plaintiffs

v.

HARRY'S NURSES REGISTRY, INC. and  
HARRY DORVILIER  
Defendants

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**FORM T-1080 ATTORNEY  
AFFIRMATION IN SUPPORT OF  
MOTION FOR LEAVE TO SUBMIT  
OVERSIZE ACCOMPANYING  
DOCUMENTS TO SUPPORT  
MOTION TO REINSTATE APPEAL  
AND RECALL THE MANDATE**

**18-3472 2d Cir Court of Appeals  
Summary Order Mandate**  
(issued 02/14/2020)

ROSELYN ISIGI,  
Plaintiff-Appellee

v.

HARRY DORVILIER, HARRY'S NURSES REGISTRY  
Defendants-Appellants

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**18-1343 2d Cir Court of Appeals  
Summary Order Mandate**  
(issued 02/07/2020)

CLAUDIA GAYLE Individually and  
On Behalf of All Others Similarly Situated  
and as Class Representative, et. al.

v.

HARRY'S NURSES REGISTRY, INC.,  
Defendant

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**12-4764 2d Cir Court of Appeals  
Summary Order**  
(filed 12/8/2014) and Mandate  
(issued 07/06/2011)

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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IN RE: DORVILIER AND HARRY'S NURSERY a/k/a  
HARRY'S NURSES REGISTRY, INC.,

Petitioner

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**1:16-cv-01765 (AMD) (LB) EDNY  
Memorandum Decision and Order**  
(*Habeus Corpus* Petition decision/  
order filed 05/31/2017)

McFARLANE

Plaintiff

v.

Harry's Nurses Registry and Harry Dorvilien (sp)  
Defendants

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**17-CV-06350 (PKC) (PK) EDNY**  
(filed 4/2/2020 and 12/07/2020)

GEORGE A. RUSK, Esq., affirms as true and states:

1. I am an attorney admitted to practice before the in the United States Court of Appeals For the Second Circuit (hereinafter referred to as the “Court”).

2. On even date hereof, I filed a Motion for the Reinstatement of Appeal and the Recall the Mandate Summary Orders of this Court in the captioned Court cases of *Gayle* and *Isigi* (hereinafter referred to as “Motion to Reinstate and Recall”).

3. I hereby request Court permission to file an oversize Memorandum of Law in connection with said Motion to Reinstate and Recall, pursuant to FRAP 27(d)2.

4. As stated in the Affirmation in Support of the Motion to Reinstate and Recall (hereinafter referred to as “the Affirmation”), there are twelve (12) decisions identified in Paragraphs 6 and 7 thereof that involve the same Defendants and identical legal issues and which have been issued over the past 13 years of federal court litigation. To further support the Motion to Reinstate and Recall, I ask permission to supplement the Affirmation with a more comprehensive review of legal arguments, case law precedents and specific references to the record dockets that may not have been communicated or articulated as carefully as the Court required in Defendant’s *pro se* filings. I propose to do this by including as an exhibit to its Memorandum of Law in support of the Motion to Reinstate and Recall and the instant Motion (hereinafter referred to as the “Memorandum”), an additional Memorandum of Law that focuses on the underlying substantive legal issues that warrant further review by this Court (hereinafter referred to as “Exhibit A”). Defendants have filed the instant Motion to accomplish three purposes:

- a. To demonstrate that Defendants will be seriously prejudiced if denied the

relief requested in its Motion to Reinstate and Recall;

- b. To demonstrate that it committed to make a good faith effort to present meritorious legal arguments that are worthy of Court consideration and necessary to achieve substantial justice; and that those arguments are credible and have a reasonable likelihood of success, if the Motion to Reinstate and Recall is granted and Defendants are allowed to subsequently file a motion to vacate the three decisions identified in Paragraph 6 of the Affirmation; and
- c. To provide assurance to the Court and all parties to the litigation that the underlying legal arguments presented in Exhibit A are documented and included in the Court docket in a transparent manner so the Court and all concerned parties are provided proper notice of the issues raised by Defendants and have access to said Exhibit A.

5. As the Court will see if it chooses to review Exhibit A, the underlying legal issues raised by Defendants require in depth review and analysis. In addressing said issues, I have made a good faith effort to balance the need to reduce the length of Exhibit A, and the wishes of my client to integrate information that they insist, is critical to fully present their legal position and allow the Court to conduct a full and fair review of the Motion to Reinstate and Recall. I also thought it appropriate to present the supplemental information as an Exhibit to the Memorandum submitted to support the Motion to Reinstate and Recall and the instant Motion, with the understanding that the Court and other concerned parties are free to review same or not, as they

deem appropriate.

6. Based on the foregoing, Defendants hereby request that the page limit for the Motion authorized under the Court's local rules 27(d)2 and 27.1 (e) be increased to 110 pages.

**WHEREFORE**, I hereby request on behalf of Defendants, that the Court permit Defendants to attach an exhibit not to exceed 110 pages, to the Memorandum to be submitted in support of its Motion to Reinstate and Recall and the instant motion.



Dated: January 13, 2021  
Buffalo, New York

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