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December 19, 2022

Ms. Maura Doyle, Clerk
Supreme Judicial Court for Suffolk County
John Adams Courthouse, Suite 1300
1 Pemberton Square
Boston, MA 02108

Re: *Joao DePina v. Worcester District Attorney's Office, et al.*,
No. SJ-2022-0465

Dear Clerk Doyle:

The respondents – the Worcester County District Attorney’s Office, Worcester County District Attorney Joseph D. Early, Jr., Assistant District Attorney Anthony Melia, and former Suffolk County District Attorney Rachael Rollins – submit this letter as their response to the petition for relief filed by Joao DePina. The petition, purportedly “pursuant to G.L. c. 231, § 118, second par. and G.L. c. 211, § 3,” is procedurally improper and should therefore be denied.

The petitioner initiated a five-count civil action in the Superior Court, arising from his prosecution by the respondents for intimidation under G. L. c. 268, § 13B. P.R.A. 6-19.¹ Before the respondents answered or otherwise pled, the petitioner sought to conduct discovery, prompting the respondents to move for a stay and a protective order. P.R.A. 39-40. They argued that discovery should not precede a ruling on their anticipated motion to dismiss, which was expected to be based—and, as served upon the petitioner, is in fact based—on various grounds of absolute, qualified, and sovereign immunity. P.R.A. 39-43. The Superior Court (Dupuis, J.) denied the respondents’ motion. P.R.A. 4, 118. The respondents then petitioned a single justice

¹ P.R.A. ___ refers to a page or pages of the Plaintiff’s Record Appendix, filed in this Court on December 6, 2022.

of the Appeals Court for relief pursuant to G.L. c. 231, § 118, first par. P.R.A. 147-72. The single justice (Blake, J.) granted the petition and entered an order, directing the Superior Court to stay discovery pending its disposition of the respondents' motion to dismiss. P.R.A. 193-96. The petitioner then filed the instant petition in this Court, challenging the Appeals Court single justice's decision.

The threshold problem with the petition here is that no appeal is available to a single justice of this Court from an order of a single justice of the Appeals Court pursuant to G.L. c. 231, § 118 or G.L. c. 211, § 3. See Kifor v. Commonwealth, 490 Mass. 1003, 1004 (2022); Cataldo v. Nat'l Grid USA, 452 Mass. 1018, 1019-20 (2008); Carista v. Berkshire Mut. Ins. Co., 394 Mass. 1009, 1009-10 (1985). "Neither G.L. c. 231, § 118, nor our caselaw, permits a civil litigant to proceed from one single justice session to another in this manner." Ashford v. Massachusetts Bay Transp. Auth., 421 Mass. 563, 568 (1995).

The petitioner invokes G.L. c. 231, § 118, second par., and G.L. c. 211, § 3, as the statutory bases pursuant to which this Court may grant relief. But G.L. c. 231, § 118, second par., pertains to injunctions, a form of relief not at issue here. See, e.g., Manousos v. Sarkis, 382 Mass. 317, 321 (1981) (explaining purpose of G.L. c. 231, § 118, second par.).² And the petitioner has not even attempted to explain why this Court's supervisory intervention is warranted under G.L. c. 211, § 3 due to "exceptional circumstances." See, e.g., McGuinness v. Commonwealth, 420 Mass. 495, 497 (1995) (discussing the legal standards governing petitions under G.L. c. 211, § 3). Indeed, where a single justice of the Appeals Court has already decided this matter under G.L. c. 231, § 118, first par., "exceptional circumstances" warranting intervention under G.L. c. 211, § 3 are necessarily absent. See Ashford, 421 Mass. at 568; Greco v. Plymouth Sav. Bank, 423 Mass. 1019, 1019-20 (1996) ("Review under G.L. c. 211, § 3, does not lie where review under c. 231, § 118, would suffice.").

In addition, the Appeals Court single justice simply and correctly recognized that, consistent with the full Court's precedents, the Superior Court should have granted the respondents' motion to stay discovery pending its disposition of the respondents (already-served) motion to dismiss on absolute and qualified immunity grounds. See Hornibrook v. Richard, 488 Mass. 74, 83-84 (2021) ("[T]he question of whether a defendant is entitled to absolute immunity is not one that should be determined through narrowly tailored discovery[.]" (citations and quotations omitted)); Brum v. Town of Dartmouth, 428 Mass. 684, 687-88 (1999) (noting "the importance of determining immunity issues early" and declaring that "it is preferable to dispose of the [immunity] question before discovery, as on a motion to dismiss" (emphasis added)); Dinsdale v. Commonwealth, 424 Mass. 176, 181 n.10 (1997) (questions of immunity for government officials are to be "resolved at the earliest possible stage of litigation" as "the entitlement is an immunity from suit, rather than a mere defense to liability" (citations and quotations omitted)). See also Caron v. Silvia, 32 Mass. App. Ct. 271, 273 (1992) ("Consistent with the reasons underlying the qualified immunity defense, it was important that the immunity

² Even if G.L. c. 231, § 118, second par. did apply here, which it does not, it does not authorize an appeal from a decision of a single justice of the Appeals Court to a single justice of the Supreme Judicial Court.

issue be resolved at the earliest possible stage of litigation, preferably before any discovery, on a motion to dismiss or for summary judgment.” (Emphasis added.)).

The petition should be denied.

Sincerely,

/s/ Hannah C. Vail
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