

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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MANDATE

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood
2 Marshal United States Courthouse at Foley Square, in the City of New York, on the
3 4th day of June, two thousand thirteen.

4 Present: AMALYA L. KEARSE,
5 ROBERT A. KATZMANN,
6 CHRISTOPHER F. DRONEY,
7 Circuit Judges.

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9 PAUL BETANCES, LLOYD A. BARNES, GABRIEL VELEZ a/k/a Gabriel
10 Belize, individually and on behalf of all others similarly situated,

11 Plaintiffs-Appellees,

12 - v. -

No. 12-0704-cv(L)

13 BRIAN FISCHER, in his capacity as Commissioner of the New York State
14 Department of Correctional Services (DOCS), and in his individual capacity;
15 ANTHONY J. ANNUCCI, in his capacity as Deputy Commissioner and
16 Counsel for DOCS, and in his individual capacity; LUCIEN J. LECLAI RE,
17 JR., former Acting Commissioner of DOCS, in his individual capacity;
18 GLENN S. GOORD, former Commissioner of DOCS, in his individual
19 capacity; JOHN/JANE DOES 1-25 (DOCS Supervisory, Training, and Policy
20 Personnel); ANDREA W. EVANS, in her capacity as Chairman and Chief
21 Executive Officer of the New York State Division of Parole (DOP), and in her
22 individual capacity; MARK MANTEI, in his capacity as Executive Director

1 of DOP, and in his individual capacity TERENCE TRACY, in his capacity as
2 Chief Counsel for DOP, and in his individual capacity; ROBERT J.
3 DENNISON, former Chair of DOP, in his individual capacity; ANTHONY G.
4 ELLIS II, former Executive Director of DOP, in his individual capacity;
5 GEORGE B. ALEXANDER, former Chair and Chief Executive Officer of
6 DOP, in his individual capacity; and JOHN/JANE DOES 26-50 (DOP
7 Supervisory, Training, and Policy Personnel),

8 Defendants-Appellants.

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11 KEVIN MICHAEL BENTLEY, FELIX TAVARES, JAMES JOHNSON,
12 JERRY PULLEY, EDWIN RIVERA, HECTOR CALDERON, KEENAN
13 JENKINS, JOSEPH SANTIAGO, LAWRENCE JACKSON, CHRISTOPHER
14 PURDIE, ROBERT GIL, GERALD EDMONDS, EDWARD MONTRANO,
15 DWAYNE DANTZLER, WALBERTO PEREZ, RUDOLPH NURSE,
16 ANTHONY HUTCHINSON, TYRONNE JOHNSON, JOSEPH SHARP,
17 SIDNEY BURCH and KEVIN DARDEN,

18 Plaintiffs-Appellees,

19 - v. -

No. 12-0741-cv(C)

20 ROBERT J. DENNISON, as former Chair, New York State Division of Parole
21 (Division) & in his individual capacity; ANTHONY G. ELLIS II, as former
22 Executive Director of the Division & in his individual capacity; GEORGE B.
23 ALEXANDER, as former Chair and Chief Executive Officer of the Division
24 & in his individual capacity; TERENCE TRACY, as Chief Counsel to the
25 Division & in his individual capacity BRIAN FISCHER, as Commissioner of
26 the New York State Department of Correctional Services (DOCS) & in his
27 individual capacity; ANTHONY J. ANNUCCI, as Deputy Commissioner and
28 Counsel for DOCS & in his individual capacity; LUCIEN J. LECLAIRE, JR.,
29 as former Acting Commissioner of DOCS & in his individual capacity;
30 GLENN S. GOORD, as former Commissioner of DOCS & in his individual
31 capacity; and JOHN and JANE DOES 1-50, as Division and DOCS Legal,
32 Supervisory Training and Policy Personnel & in their individual capacities,

33 Defendants-Appellants.
34 _____

1 For Appellants: Steven C. Wu, Assistant Solicitor General, N.Y., N.Y. (Eric T. Schneiderman,
2 Attorney General of the State of New York, Barbara D. Underwood, Solicitor
3 General, Richard Dearing, Deputy Solicitor General, N.Y., N.Y., on the brief).

4 For Appellees: Matthew D. Brinckerhoff, N.Y., N.Y. (Adam R. Pulver, Emery Celli Brinckerhoff
5 & Abady, N.Y., N.Y., Joel Berger, Sonnenfeld & Richman, N.Y., N.Y., on the
6 brief).

7 Appeals from the United States District Court for the Southern District of New York.

8 These causes came on to be heard on the record from the United States District Court for the
9 Southern District of New York, Shira A. Scheindlin, Judge, and were argued by counsel.

10 ON CONSIDERATION WHEREOF, it is now here by ordered, adjudged, and decreed that the
11 order of said District Court be and it hereby is affirmed.

12 In these consolidated appeals, defendants Brian Fischer et al, employees or former employees of
13 the New York State Department of Correctional Services or the New York State Division of Parole, appeal
14 from an order of the United States District Court for the Southern District of New York, Shira A.
15 Scheindlin, Judge, denying their motions to dismiss, on grounds of qualified immunity, these actions
16 brought by former New York State prisoners Plaintiffs Paul Betances et al seek damages and declaratory
17 relief pursuant to 28 U.S.C. § 1983, alleging that defendants violated their rights to due process by
18 administratively imposing and enforcing conditions of supervision on plaintiffs following their release
19 from prison, despite the absence of any order for such supervision by the courts that sentenced plaintiffs
20 for their crimes. Arguing that they were entitled to qualified immunity on the ground that the law was not
21 clearly established at the time of their challenged conduct, defendants moved to dismiss pursuant to Fed.
22 R. Civ. P. 12(b)(6). The district court denied the motions, ruling that plaintiffs' rights became clearly
23 established when this Court decided Earley v. Murray, 451 F.3d 71 (2d Cir.), reh'g denied, 462 F.3d 147
24 (2d Cir. 2006), cert. denied, 551 U.S. 1159 (2007). Defendants challenge that ruling on this appeal.

25 In an opinion filed today in the consolidated appeals in Vincent v. Yelich, Nos. 11-3893, -3966,
26 and Earley v. Annucci No. 12-0439 ("Vincent"), this Court ruled that Earley v. Murray clearly established
27 that the administrative imposition of post-release supervision terms not imposed by the court is
28 unconstitutional. In Vincent, we vacated orders of the respective district courts that had dismissed, on
29 qualified immunity grounds, claims against defendant Anthony J. Annucci that parallel the claims asserted
30 by plaintiffs Betances et al against the defendants in the present actions. Defendants in the present actions
31 have not presented any basis in their brief on appeal for distinguishing between the claims against Annucci
32 and the claims against the other defendants. Accordingly, we affirm the order of the district court, denying
33 defendants' Rule 12(b)(6) motions to dismiss on the ground of qualified immunity, substantially for the
34 reasons stated in our reversal of the grant of such immunity in Vincent.

1 We have considered all of defendants' contentions on these appeals and have found them to be
2 without merit. The order of the district court is affirmed.

3 FOR THE COURT:
4 CATHERINE O'HAGAN WOLFE, Clerk of Court

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A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

 

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