LEXSEE 2005 U.S. DIST. CT. MOTIONS 10446

Go To U.S. District Court Opinion

M.K.B., O.P., L.W., M.A., Marieme Diongue, M.E., P.E., Anna Fedosenko, A.I., L.A.M., L.M., Denise Thomas, and J.Z., on their own behalf, and on behalf of their minor children and all others similarly situated, Plaintiffs, - against - VERNA EGGLESTON, as Commissioner of the New York City Human Resources Administration; ROBERT DOAR, as Commissioner of the New York State Office of Temporary and Disability Assistance; and ANTONIA C. NOVELLO, as Commissioner of the New York State Department of Health, Defendants.

05 Civ. 10446 (JSR) (ECF CASE)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2005 U.S. Dist. Ct. Motions 10446; 2006 U.S. Dist. Ct. Motions LEXIS 20888

September 20, 2006

Motion for Reconsideration

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TITLE: PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO STATE DEFENDANTS' MOTION FOR RECONSIDERATION

TEXT: [*1] **PRELIMINARY STATEMENT**

Plaintiffs submit this memorandum of law in opposition to the State defendants' motion for reconsideration of a portion of this Court's decision and order granting class certification. Because no issue of fact or law was presented to and overlooked by the Court, the motion should be denied in its entirety.

ARGUMENT

THE STATE DEFENDANTS' MOTION FOR RECONSIDERATION SHOULD BE DENIED

A. Standards Governing Motions for Reconsideration

"The standard [**5] for granting such a motion [for reconsideration] is strict." *Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995).* "[R]econsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Id. A motion for reconsideration "is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" *Sequa Corp. v. Gbj Corp., 156 F.3d 136, 144 (2d Cir. 1998).* A "party who realizes, with the acuity of hindsight, that he failed to present his strongest case at trial, is not entitled to a second opportunity by moving to amend a finding of fact or a conclusion of law." *United States v. Local 1804-1, Int'l Longshoremen's Ass'n, 831 F. Supp. 167, 169 (S.D.N.Y. 1993).* In short, a "motion for reconsideration may not be used to advance new facts, issues or arguments not previously presented to the Court, nor may it be used as a vehicle for relitigating issues already [**6] decided by the Court." *Davidson v. Scully, 172 F. Supp. 2d 458, 461 (S.D.N.Y. 2001).*

[*2] Moreover, a motion for reconsideration "is not a substitute for appeal and 'may be granted only where the Court has overlooked matters or controlling decisions which might have materially influenced the earlier decision.'" *Morales v. Quintiles Transnational Corp., 25 F. Supp. 2d 369, 372 (S.D.N.Y. 1998).* In determining whether a motion for reconsideration should be granted, Local Rule 6.3 should "be narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the Court." *Wechsler v. Hunt Health Systems, Ltd., 2004 U.S. Dist. LEXIS 19757,* at *7 (S.D.N.Y. Sept. 30, 2004).

B. The Motion to Remove from the Class Lawful Permanent Residents Who Have Had Their Green Cards for Less than Five Years Should Be Denied

The State's motion to remove from the class definition lawful permanent residents ("LPRs") who had their green cards for less than five years should be denied. The State's suggestion that the plaintiffs presented "no evidence" that LPRs in this situation [**7] were systematically being denied benefits, and that "the Court's decision found none" (State Mem. at 3), is wholly incorrect. Indeed, the Court made numerous factual findings on just this point, including an explicit finding that the violations were systemic. The State's assertion that the claim of one such class member, Galina Rybalko, has become moot is contrary to the law in this Circuit, which holds that for mootness purposes, the claim relates back to the date of her intervention motion. Finally, because of misstatements about the law, the State's analysis of what it describes as four categories of LPRs is flawed. Actually, there is only one relevant group of LPRs: those who have been in that status for less than five years. Ms. Rybalko is an adequate class representative for these class members. Whether these class members entered the United States as LPRs; switched to that status before applying for benefits; or switched to that status after [*3] applying for benefits is immaterial.

1. The Court received substantial evidence that defendants wrongly denied public benefits to immigrants who were lawful permanent residents for less than five years

Substantial [**8] evidence was presented to the Court that City workers erroneously denied public benefits to class members because they erroneously believed that being a lawful permanent resident for five years is a condition of eligibility, or because the defendants' computer systems "errored out" when eligible applicants did not have five years of lawful permanent resident status.

For example, declarant K.T. and her minor daughter were LPRs with less than five years in that status when they applied for public assistance, Medicaid, and Food Stamps in December 2004. (Declaration of K.T., dated Oct. 12, 2005, PP 3, 5.) As an LPR, K.T., a victim of domestic violence, was eligible for public assistance and Medicaid. Her daughter, as an LPR under the age of 18, was eligible not only for public assistance and Medicaid, but also for federal food stamps. The worker at the Linden Center told K.T. that they were ineligible for any benefits because they were not

LPRs for five years. Only her citizen son's application was processed. (Id. P 5.)

Later, K.T. made additional efforts to be added to her citizen son's public benefits case. In March 2005, she went to the Bushwick Job Center, where her son's case [**9] had been transferred. Her caseworker, Ms. Reyes, "said that my daughter and I were ineligible for Public Assistance, Medicaid, and Food Stamps because we were lawful permanent residents for less than five years." (Id. P 9.) Ms. Reyes denied all benefits to K.T. and her minor daughter for that reason.

Likewise, declarant Polina Benyminov had been an LPR for several months when she [*4] applied for public assistance and Medicaid at the Bay Ridge Job Center in December 2003. Although as an LPR she was eligible for both benefits, she was denied all benefits on account of her immigration status. (Declaration of Polina Benyminov, dated Aug. 25, 2005, P 6.) In January 2004 she attempted to reapply at the Linden Job Center. There the worker told her orally that she was ineligible. (Id. P 8.)

Further, the record is replete with evidence that City and State workers erroneously told applicants that they had to be an LPR for at least five years in order to receive benefits. For example, on May 17, 2005, declarant R.R. applied for cash assistance at Dyckman Job Center. As the Court noted in its factual findings, "In May 2005, one of those employees wrongly told R.R. that she was [**10] ineligible for benefits because she did not have a green card and had not been a green card holder for five years." *M.K.B. v. Eggleston, 2006 U.S. Dist. LEXIS 61347,* at *42 (S.D.N.Y. Aug. 29, 2006). R.R. explained that the worker "could not help me and would not enter my information into the computer system." (Declaration of R.R., dated Sept. 29, 2005, P 12.) Similarly, on February 2, 2005, Ms. Matias at the Hamilton Job Center told declarant W.S. that she was not eligible for food stamps because W.S. had not had her green card for five years. (Declaration of W.S., dated Nov. 22, 2005, PP 14-15.)

Likewise, the Court heard the testimony of Galina Rybalko, whose motion to intervene in this action was granted for the purpose of representing those class members who are green card holders for less than five years. (Tr. 1401:5-8.) City workers at the Coney Island Job Center repeatedly stated erroneously that Ms. Rybalko is ineligible for food stamps because she has not had her green card for five years. (Tr. 325:20-326:17; 329:13-330:8.) In response to Ms. Rybalko's request for a fair hearing, the City prepared a statement asserting that Ms. Rybalko [*5] must have [**11] a green card for five years in order to be eligible for food stamps. (Pl. Ex. 70.) In its Opinion and Order, the Court found that Ms. Rybalko had wrongly been denied benefits because the City failed to add the time she had been a parolee to the time she had been a lawful permanent resident, which together were more than five years. *M.K.B. v. Eggleston, 2006 U.S. Dist. LEXIS 61347,* at *54.

Additionally, in September 2004, a worker at the Senior Works center told plaintiff Anna Fedosenko's granddaughter that Ms. Fedosenko was ineligible for food stamps until she had had her green card for more than five years. (Declaration of Anna Fedosenko, dated Nov. 21, 2005, P 8.) On September 7, 2005, at M.L.'s fair hearing challenging the denial of her application for food stamps for herself, the State's Administration Law Judge told her that "the only person eligible for food stamps, I don't know about the work permit ones, but you have to have a green card for at least 5 years." (Transcript of M.L. fair hearing dated September 7, 2005, attached as Exh. 17 to Declaration of Russell W. Jacobs, dated Dec. 12, 2005, at 15.)

Indeed, counsel for the City continued to make erroneous [**12] statements regarding the eligibility of such lawful permanent residents throughout this case. Jesse Levine, counsel for the City, said at the hearing that Ms. Rybalko was ineligible for benefits "because she cannot combine two statuses into five years." (Tr. 1209:2-8.) David Lock, Deputy General Counsel of Human Resources Administration wrote that Ms. Rybalko "is not entitled to Food stamp benefits since she is a lawful permanent resident and does not have 40 qualifying quarters of work." (Pl. Ex. 1170.)

Further, the State acknowledged that its training materials were erroneous with respect to LPRs who have been in that status for less than five years. The State's December 2005 training [*6] materials state that "Alien eligibility for FS is limited to: . . . Permanent resident aliens who have resided in the U.S. for at least 5 years." (Ex. 677 at 10437.)

Stephen Ptak testified that this statement in the training materials was incorrect and that instead of "permanent resident aliens who have resided in the United States for at least five years," it should have said permanent resident aliens "who have qualifying status for five years." (Tr. 1160:7-11.)

Finally, computer design [**13] errors caused LPRs who had been in that status for less than five years to be denied benefits erroneously. The problem was described during the testimony of Reena Ganju, who recounted her conversation with a City worker at the Seaport Job Center, Ms. Harris, concerning one of Ms. Ganju's clients, W.S. W.S. had applied for the former State Food Assistance Program (FAP). The worker said that "because she was putting in a date of entry as the date that she, the client, had gotten a green card and that was less than five years of having a green card, the case was erroring out," (Tr. 405:13-18.), a fact the Court explicitly noted in its decision. *M.K.B. v. Eggleston, 2006 U.S. Dist. LEXIS 61347,* at *68-*69.

After receiving all this evidence, the Court found that "the City had a policy, custom, and usage of denying benefits to . . . lawful permanent residents who had been in that status for less than five years." *M.K.B. v. Eggleston, 2006 U.S. Dist. LEXIS 61347,* at *94 (emphasis added). The Court expressly found that these instances were not "simply 'isolated unconstitutional acts of . . . employees.'" Id. Rather, the Court found, the plaintiffs "have [**14] made a very substantial showing that the mistaken determinations were the direct results of the flawed design of the City's computer system ('POS'), the pervasive errors in the City's training materials and policy directives, and the widespread worker ignorance resulting from the inadequate training of the City employees." Id. Thus, the State's assertion that the Court made no finding that this practice [*7] was systemic is directly contradicted the Court's decision. Further, substantial evidence supported the Court's finding that the practice was systemic, including the sheer number of different Job Centers involved, the fact that training materials and the City and State computer systems were partly at fault, and that fact that supervisors and other senior officials were under a mistaken understanding of the law.

2. Galyna Rybalko is an adequate class representative of all LPRs who have been in that status for less than five years

In certifying a class action, it is not necessary to have a class representative for each and every factual variation among members of the class. "When it is alleged that the same unlawful conduct was directed at or affected both [**15] the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." *Robidoux v. Celani, 987 F.2d 931, 936-37 (2d Cir. 1993). Rossini v. Ogilvy & Mather, Inc., 798 F.2d 590 (2d Cir. 1986),* which the Court cited in its decision, illustrates this principle. There, the Court of Appeals reversed a decision decertifying a class in an employment discrimination case in which the class representative alleged she was a victim of discriminatory denial of transfers. The class she sought to represent included women who suffered discrimination in advancement generally, including denials of transfer, fewer training opportunities, and lack of promotions. "Evidence indicating that the employer discriminated in the same general fashion against the class representatives and against other members of the class was held sufficient to satisfy the typicality requirement." *Robidoux, 798 F.2d at 937.*

Here, as in Robidoux and Rossini, there are minor variations in the factual circumstances of individual LPR class members. Some, like [**16] K.T. and Polina Benyminov, entered this country [*8] as LPRs. Others, like Galina Rybalko, switched to LPR status from another immigration status. These differences are immaterial. The point is that, as the Court found, City workers systematically and erroneously denied benefits to LPRs who had their green cards for less than five years.

Galina Rybalko is an adequate class representative for all these LPRs. She was eligible for a public benefit -- federal food stamps -- because she had a qualified alien status for five years. Despite her eligibility, she was denied food stamps because City workers wrongly believed she needed to have a green card for five years. That situation is typical of all the LPRs who were wrongly denied assistance for various public benefits because City workers wrongly believed they needed a green card for five years, or were unable to enter their cases in the computer for that reason. It is not necessary to have a separate class representative for every public benefit category, or for every immigration status in

which an immigrant began before becoming an LPR.

The State's assertion that Ms. Rybalko is not an adequate class representative because her [**17] claim has become "moot" lacks merit. The law in this Circuit is directly to the contrary. As the Second Circuit held in Robidoux:

> Where class claims are inherently transitory, "the termination of a class representative's claim does not moot the claims of the unnamed members of the class." *Gerstein v. Pugh, 420 U.S. 103, 110 (1975); Sosna v. Iowa, 419 U.S. 393, 401-02 (1975).* Even where the class is not certified until after the claims of the individual class representatives have become moot, certification may be deemed to relate back to the filing of the complaint in order to avoid mooting the entire controversy.

Robidoux v. Celani, 987 F.2d at 938-39; see also *Krimstock v. Kelly, 306 F.3d 40, 70 n.34 (2d Cir. 2002); Comer v. Cisneros, 37 F.3d 775, 798-99 (2d Cir. 1994); Williston v. Eggleston, 379 F. Supp. 2d 561, 570 (S.D.N.Y. 2005).*

[*9] As in Robidoux, the claims in this case are "inherently transitory." Ms. Rybalko moved to intervene in this action. The event analogous to the filing of her complaint is her motion to intervene. That motion was made [**18] on March 24, 2006. (Tr. 1409:6-12.) As of that date, Ms. Rybalko had still not received the benefits to which she was entitled (Tr. 1405:2-6), and her claim was therefore not moot. Under the law of this Circuit, Ms. Rybalko does not become an inadequate class representative merely because, after she moved to intervene, the defendants paid the benefits she was owed. Indeed, all the plaintiff class representatives have now received the benefits they were owed; they do not thereby become inadequate class representatives. n1

> n1 The State erroneously suggests that Ms. Rybalko's claim is also moot because the State introduced a "lock" on the date field in WMS. First, the State has been ordered to add a second date field because the "lock" does not entirely cure the problem. That second date field has not yet been added. Second, Ms. Rybalko is representing all LPRs who have had their green cards for less than five years, not merely those who were foiled by the lack of a "lock" on the WMS date field.

3. [**19] **The State's analysis of the groups of LPRs is flawed**

In its brief, the State purports to divide the class of LPRs who have been in that status for less than five years into four groups. Because of misstatements about the law, the State's analysis of these four groups is seriously flawed. Actually, there is only one relevant group of LPRs. That some of this group entered the United States as LPRs, some switched to that status before applying for benefits, and others attained that status while on benefits is not material.

As defined by the State, the first group (Group 1) consists of LPRs who entered the United States in LPR status or who attained that status after being in a non-qualified status. n2 As [*10] noted, the court heard evidence about various immigrants in this category, including plaintiff Anna Fedesenko and declarants K.T. and Polina Benyminov. The second category (Group 2) consists of immigrants who entered the United States in a qualified status, such as Galyna Rybalko, and later changed to LPR status. Although the State distinguishes analytically between Groups 1 and 2, there is no distinction between them as far as the evidence was concerned. As noted, [**20] substantial evidence showed that immigrants in both groups were wrongly denied benefits unless they were in an LPR status for five years. Neither City nor State workers made any distinction between whether an immigrant was initially in an LPR status when she arrived in the United States, or alternatively, whether she started in a non-qualified status, or a qualified status other than LPR, and later switched to LPR status by the time she applied for benefits.

> n2 The State erroneously asserts that immigrants in Group 1 are not eligible to receive federal benefits "until

they have been five years in LPR status." (State Mem. at 4.) LPRs who entered the United States before August 22, 1996, are eligible to receive federal Medicaid and TANF assistance without five years of LPR status. *8 U.S.C. § 1613*(a).

The third group defined by the State (Group 3) includes LPRs who were initially in a so-called "specially qualified" alien status. n3 The State claims that this group is eligible to receive food [**21] stamps and Medicaid for seven years, and thereafter if they become LPRs. This assertion is simply wrong. As noted in P 55(b) of the Complaint, all the so-called "specially qualified" aliens are eligible to receive food stamps without regard to time limitation, and without regard to [*11] whether they achieve LPR status. Immigrants listed in *8 U.S.C. § 1612*(a)(2)(A) are eligible for federal food stamps for seven years; therefore they remain eligible for federal food stamps under § 1612(a)(2)(L) because they are "Qualified Aliens" who have been in a qualified status for more than five years. The other categories of "specially qualified" aliens are also eligible without time limitation. Therefore, as far as food stamps are concerned, it is of no importance whether any of these immigrants attains LPR status after seven years or otherwise. n4 The same is true for Medicaid and public assistance. As noted in P 65 of the Complaint, all the "specially qualified" aliens are eligible for both programs. *8 U.S.C. § 1613*(b). As far as Medicaid and public assistance are concerned, it is of no importance whether they achieve LPR status. Thus, the [**22] third group is completely irrelevant to the State's motion.

n3 The term "specially qualified" alien does not appear in federal law. OTDA has defined the term to refer generally to the groups of immigrants who are listed in *8 U.S.C. § 1612*(a)(2) as exempt from the seven-year bar on federal food stamps, and/or who are listed in *8 U.S.C. § 1613*(b) as exempt from the five-year bar on federal means-tested public benefits (including federal Medicaid). See http://www.otda.state.ny.us/otda/ta/ta_sourcebook.htm, ch. 24, § B (Feb. 2005). As OTDA defines it, the term "specially qualified" alien partially overlaps with "Qualified Alien" as defined under federal law, *8 U.S.C. § 1641*(b) and (c). Both groups include refugees, persons granted asylum, granted withholding of deportation, and Cuban and Haitian entrants. The term "specially qualified" alien also includes several groups of immigrants who are not designated as "Qualified Aliens," including Amerasians and certain veterans who are "lawfully residing in any State." As explained in footnote 4 infra, OTDA's definition of "specially qualified alien," as posted on its external web site, does not reflect revisions to the definition made since the preliminary injunction hearing in this case.

[**23]

n4 In the version of the Temporary Assistance Source Book posted on its external web site, for those categories of "specially qualified aliens" who are also "Qualified Aliens," OTDA's definition provides that the alien is a "specially qualified alien" "for a period of seven years." See http://www.otda.state.ny.us/otda/ta/ta_sourcebook.htm, ch. 24, § B (Feb. 2005). After the preliminary injunction hearing in this case, however, and consistent with the argument made here that it is not relevant, for purposes of federal benefits eligibility, whether these immigrants attain LPR status within seven years, OTDA revised this page of the Source Book to delete the references to seven years. (Bates Stamp No. MKB-OTDA 11610.) Those changes have not been posted to the external OTDA web site.

The last group (Group 4) of LPRs is said to consist of three subcategories: (1) children under 18 years of age who are eligible for food stamps under *8 U.S.C. § 1612*(a)(2)(J); (2) persons receiving benefits for blindness or disability, who are eligible for food stamps under *8 U.S.C. § 1612* [**24] (a)(2)(F)(2); and (3) persons who have worked 40 qualifying quarters under the Social Security Act, who are eligible for food stamps under *8 U.S.C. § 1612*(a)(2)(B). However, the State has badly mangled its description of the law. The first two subcategories do not consist [*12] of LPRs, but Qualified Aliens. n5 The State has tripped over the same distinction that befuddled the City's workers in so

many cases discussed at trial. The immigrants who are eligible for food stamps under §§ 1612(a)(2)(J) and (F)(2) are eligible by reason of being Qualified Aliens, not LPRs. There are various plaintiffs in this category, including the older children of M.K.B., see Complaint P 149; the daughter of M.E., see P 223; P.E.'s older son, see P 239, and A.I.'s older daughter, see P 264. They are wholly irrelevant to any issue concerning LPRs.

n5 The term Qualified Alien, which is defined in *8 U.S.C. § 1641*(b) and (c), is broader than the term LPR. As noted in the Complaint, P 42, Qualified Aliens include LPRs, as well as persons granted asylum, admitted as a refugee, paroled into the United States for at least one year, granted withholding of deportation or conditional entry, Cuban and Haitian entrants, and, importantly for this case, battered and subject to extreme cruelty. *8 U.S.C. § 1641*(b), (c).

[**25]

The third subcategory of Group 4 -- LPRs who have worked 40 qualifying quarters -- is indeed a category specific to LPRs, and not all Qualified Aliens. However, as far as the evidence in this case is concerned, it is analytically the same as Groups 1 and 2 above. These are LPRs who either started out as LPRs, or who later switched to LPR status, and who were wrongly denied food stamps.

In summary, although the State posits four groups of LPRs and purports to dissect them, actually there is only one relevant group to consider. That group is comprised of LPRs who have been in that status for less than five years, regardless of the status in which they began before they became LPRs. As explained above, substantial evidence demonstrated that City workers wrongly denied benefits to these immigrants, and that the practice of doing so was systemic and not isolated. Galina Rybalko is adequate to serve as their class representative. Accordingly, there is no basis for removing them from the class.

Finally, the Court has already considered and rejected substantially the same argument [*13] that the State is now advancing. As the Court held, "[a]lthough defendants argue that each member [**26] of the class was denied benefits for slightly different reasons and under slightly different circumstances, the Court of Appeals, in strikingly similar circumstances, has found that the commonality and typicality requirements are met." *M.K.B. v. Eggleston, 2006 U.S. Dist. LEXIS 61347,* at *116 (citing *Marisol A. v. Giuliani, 126 F.3d 372, 376 (2d Cir.1997)* (per curiam)). A motion for reconsideration is not an occasion for relitigating issues already decided by the Court. *Davidson v. Scully, 172 F. Supp. 2d at 461.*

For all these reasons, the State's motion to remove LPRs who have been in that status for less than five years should be denied.

C. The Motion to Remove PRUCOLs From the Class Should be Denied

The State's request to remove PRUCOLs from the class because relief regarding PRUCOLs would be barred by the Eleventh Amendment should be denied. The State's position has been squarely rejected by the Second Circuit and by district courts in this Circuit. Moreover, this issue was previously presented to the Court and rejected in footnote 20 of the Court's decision. *M.K.B. v. Eggleston, 2006 U.S. Dist. LEXIS 61347,* [**27] at *111 n.20.

The leading case on point is the Second Circuit's decision in *Holley v. Lavine, 605 F.2d 638 (2d Cir. 1979).* In Holley, the plaintiff, an immigrant, sought public assistance on the ground that she was PRUCOL. She brought an action in federal court against the State and the local county welfare commissioner, alleging both an Equal Protection claim and a pendent claim. n6 [*14] Ruling in her favor on the pendent claim, the district court directed the county defendant to reimburse the plaintiff for public assistance wrongfully denied, but denied, on Eleventh Amendment grounds, similar relief against the State defendant. On appeal, the county defendant argued that the Eleventh Amendment barred any relief against the county because the State controls the policies of the county department. The

Second Circuit squarely rejected this argument:

> That the State controls the policies of the County Department of Social Services is not decisive on the Eleventh Amendment issue. In *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979),* the Court noted that it has "consistently refused to construe the Amendment [**28] to afford protection to political subdivisions such as counties and municipalities, even though such entities exercise a 'slice of state power.'" Of much greater significance is the entity upon whom rests the primary obligation to make payments to the AFDC recipient, and as discussed below, that entity appears to be the County.

Holley, 605 F.2d at 643-44 (emphasis added).

n6 At the time, Holly's constitutional claim could be considered only by a three-judge court. See former *28 U.S.C. § 2281* (repealed Aug. 12, 1976). Her pendent claim, in contrast, could be heard by a district court judge sitting alone. In an earlier phase of the litigation, the Second Circuit had held that the constitutional claim was sufficiently substantial to support pendent jurisdiction. The Court held that, "since pendent jurisdiction exists over them, the district judge, sitting alone, may well want to consider and rule upon these claims before convening the three-judge court." *Holley v. Lavine, 529 F.2d 1294, 1295-96* (2d Cir.) (per curiam), cert. denied, *426 U.S. 954 (1976).*

[**29]

Central to the Second Circuit's reasoning is that under State law, the counties bear "'ultimate responsibility' for public assistance payments." Id. at 644 (quoting *Toia v. Regan, 54 A.D.2d 46, 50* (4th Dept.), aff'd, *40 N.Y.2d 837 (1976),* app. dismissed, *429 U.S. 1082 (1977)).* n7 "Moreover, 'the county's duty to provide assistance is not dependent upon the receipt of [*15] equivalent money from the State and the cases have so held.'" Id. (quoting *Jones v. Berman, 37 N.Y.2d 42, 55 (1975)).*

n7 The Court noted "that legislature has seen fit to create local social service districts, which are required by law to provide for the 'assistance and care of any person . . . who is in need of public assistance and care which he is unable to provide for himself.' N.Y. Soc. Serv. Law § 62(1). Moreover, section 88 of the New York Social Services Law makes it 'the duty of the board of supervisors of a county, the town board of a town and the appropriating body of a city to make adequate appropriations and to take such action as may be necessary to provide the public assistance and care required by this chapter.'" *Holley, 605 F.2d at 643.*

[**30]

Since Holley, a number of district courts have held that they have power, under the exercise of supplemental jurisdiction, to direct the City to provide State public benefits to public assistance recipients, notwithstanding the State's supervisory control over the City defendant. For example, in *Reynolds v. Giuliani, 2005 U.S. Dist. LEXIS 2743* (S.D.N.Y. Feb. 14, 2005), Judge Pauley recently rejected the same argument advanced here by the State defendants. Citing *Holley, 605 F.2d at 644,* Judge Pauley held: "Local social services districts do not enjoy sovereign immunity against plaintiffs' Social Services Law claim because they have a duty to administer public assistance under New York law. Thus, the City can be held liable for failing to comply with the strictures of [State law]." *2005 U.S. Dist. LEXIS 2743,* at *57.

Likewise, in *Henrietta D. v. Giuliani, 119 F. Supp. 2d 181 (E.D.N.Y. 2000),* aff'd, *331 F.3d 261 (2d Cir. 2003),* cert. denied, *541 U.S. 936 (2004),* the district court found that the City had violated various State laws requiring the provision of State-funded benefits [**31] to public assistance recipients, and ordered the City to comply with those

provisions. *119 F. Supp. 2d at 217-21.* On appeal, the Second Circuit held that the State defendants are required by law to supervise the delivery of public benefits by the City defendant. *331 F.3d at 286-87.* Notwithstanding the State's supervisory obligations and control over the City defendant, however, the Court of Appeals affirmed the district court's injunction directing the City to deliver State-funded benefits in compliance with State law. The district court "properly exercised pendent jurisdiction over the state claims given that the underlying factual issues were identical, and efficiency was therefore obviously served by simultaneous adjudication of the state law issues." *Id. at 291.*

[*16] Today, New York law mandates that all local social services districts, including HRA, must provide State Medicaid and State-funded public assistance to PRUCOL immigrants. n8 Under Holley, local departments of social services, including HRA, have the ultimate responsibility for delivering these benefits -- regardless of whether they receive State reimbursement, and [**32] regardless of whether policies of the local districts are subject to approval or control by the State. Thus, even assuming arguendo (as does the State, see State Mem. at 9), that the State might not approve a City policy directive concerning PRUCOLs, that failure would not affect this Court's power to require the City defendant to comply with State law under the Court's supplemental jurisdiction.

n8 Section 122(1)(c) of the State Social Services Law provides that persons shall be eligible for Safety Net Assistance and medical assistance (Medicaid) if they are "permanently residing in the United States under color of law." Although the statute delineates certain limitations on PRUCOL eligibility for purposes of Medicaid, those limitations were declared unconstitutional by the New York Court of Appeals in *Aliessa v. Novello, 96 N.Y.2d 418 (2001).*

Finally, as noted, this issue was already presented to the Court and rejected. *M.K.B. v. Eggleston, 2006 U.S. Dist. LEXIS 61347,* [**33] at *111 n.20. A motion for reconsideration may not be used "as a vehicle for relitigating issues already decided by the Court," *Davidson v. Scully, 172 F. Supp. 2d at 461,* and "is not a substitute for appeal." *Morales v. Quintiles Transnational Corp., 25 F. Supp. 2d at 372.* Accordingly, there is no basis for modifying the class definition regarding PRUCOLs.

CONCLUSION

For the foregoing reason, the State defendants' motion for reconsideration should be denied in its entirety.

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Respectfully submitted,

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