No. 17-1537

In The
Supreme Court of the United States

PATRICIA MORRISON,
Administratrix for the Estate of Tommy Morrison,

Petitioner,

v.

QUEST DIAGNOSTICS INCORPORATED, JOHN HIATT, DR. MARGARET GOODMAN, NEVADA STATE ATHLETIC COMMISSION, and MARC RATNER,

Respondents.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.2, the Estate of TOMMY MORRISON, hereby respectfully petitions for rehearing of this case before a full nine-Member Court. Rehearing is granted when at least *one* Justice from the majority believes that he or she may have decided in error. There was a **vacant seat** during certiorari stage, and this Petition for Rehearing should be granted.

1. In *United States v. One 1936 Model Ford V-8 Deluxe Coach*, 305 U.S. 666 (1938) the Court was divided equally in a case when there was a vacancy due to Justice Cardoza's death, but before the vacancy was filled. This Court granted the petition, *ibid*., then heard the case after Justice Frankfurter was confirmed. *See also MacGregor v. Westinghouse Elec. & Mfg. Co*., 327 U.S. 812 (1946); *Ryan Stevedoring Co. v. Pan-Atl. Corp.*, 349 U.S. 926 (1955).

2. "The interest in finality of litigation must yield when the interests of justice would make unfair the strict application of the Rules of this Court." *See United States v. Ohio Power Co*., 353 U.S. 98 (1957) *where*: Certiorari Denied October 17, 1955; Rehearing Denied December 05, 1955; Rehearing Again Denied May 26, 1956; Order Denying Rehearing *Vacated* June 11, 1956, Rehearing and Certiorari Granted; Decided April 1, 1957, 353 U.S. 98.

3. This Court therefore should grant rehearing to provide for a decision now that this Court has a full complement of Members, rather than allow a nonprecedential affirmance by an equally divided Court to

leave in place a nationwide injunction of such significance.

AN OPEN LETTER

Dear Chief Justice Roberts; Justice Thomas; Justice Ginsburg; Justice Breyer; Justice Alito; Justice Sotomayor; Justice Kagan; Justice Gorsuch; Justice Kavanaugh and respective Law Clerks

Since *Bragdon v. Abbott*, 1998, Case No. 97-156, this Court has not encountered another 'exceptional circumstance' case regarding HIV – the Human Immunodeficiency Virus (https://civilrights.findlaw.com/discrimination/the-americans-with-disabilities-act-overview.html). By denying Certiorari, it is evident this Court has been denied decades of available scientific data to rule on this HIV case in 2018.

Defendants indefinitely, immediately, worldwide, suspended TOMMY from his career and placed an 'HIV' stigma on him from 1996 through 2013.

Defendants used: ***NAC 467.027(3)(b). A non-existent Rule in 1996,*** and unlawful under NRS 233B, and in violation of the *Americans with Disabilities Act of 1990* (ADA), 104 Stat. 327, 42 U.S.C. §12101, 'regarded as' prong. The statute defines disability as: ***(c) being regarded as having such impairment.***

December 01, 2011, TOMMY underwent surgery for a *'tick bite'* to his chest removing major and minor

pec muscle and an implant. A one hour out-patient surgery became the surgery from hell. December 07, 2011, we finally returned home. On December 08, the home health nurse discovers 12 feet of undocumented surgical gauze that had been left in TOMMY's chest to rot for 1 week. That night TOMMY's leg gave way, his head fell through a wall, and he landed on his neck. The next 21 months he spent in and out of septic shock.

July, 2012, TOMMY's blood was drawn and sent to a CLIA Accredited full service laboratory at **Boston Massachusetts Hospital,** *Voted #2 in Top Hospitals for Infectious Diseases in 2018*. His blood was tested for the Human Immunodeficiency Virus, HIV. The report confirmed ***no viral particles detected and no abnormalities, and I filed it with the court below.***

Throughout 2012, TOMMY was tested for 'AIDS' diseases associated with HIV, such as Pneumocystis Carinii; Kaposi Sarcoma; HTLV I; HTLV II; Cryptococcus; Cytomegalovirus; Histoplasmosis; JC Polyoma Virus, *inter alia.* All reports came back **negative**, and are in court records.

September 01, 2013, in Omaha, Nebraska, TOMMY died of cardiac arrest, septic shock, septicemia and multi organ failure. His blood was drawn for a postmortem investigation specifically to rule out the cause of death due to the HIV Virus. **'UNMC'**, (*University of Nebraska Medical Center, is both CAP, College of American Pathologists, and CLIA Accredited*), **performed the postmortem investigation**, and is independent from Defendant QUEST.

UNMC reported results of the postmortem and ***'Final Diagnosis',*** (the only diagnosis on the record), to me on September 17, 2013, confirming TOMMY's blood was ***undetectable for any viral particles, no abnormalities, and no budding retroviruses (HIV is a retrovirus*)**. On September 24, 2013, UNMC faxed me the report, and I filed it with the court below.

Detailed images of TOMMY's blood were taken both in 2012 and 2013, at 7,800, 18,000, and 25,000 magnification. **UNMC** also holds required laboratory licenses with the State of California Department of Public Health; State of Florida; and the Pennsylvania Department of Health. In 2017, ***UNMC formed a CRIME LAB*** *where all of their testing is admissible in the Court of Law.* Since 1977, UNMC, has remained among the exclusive group of laboratories worldwide that has met the highest standards of excellence, and meets standards for quality, accuracy, and reliability of tests.

Why would I, or you, doubt **UNMC** or **Boston Mass. General**? Why would Defendants specifically 'conceal' these reports from the Courts?

After 7 months of due diligence, I timely filed this lawsuit on July 24, 2014, after identifying the correct Defendants.

Amended FRCP 26(b)(1) 'kicked in' during this lawsuit, but Defendants persuaded the lower courts that ***2 important documents*** could simply be fraudulently concealed, claiming under Oath " . . . *Quest Diagnostics was not successful in obtaining those records*

from the third parties who allegedly prepared the report."

Boston, 2012, and, Omaha 2013, ante/postmortem reports, ***were and are*** " *. . . relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy. . . the importance of the discovery in resolving the issues. . . .*" (FRCP 26(b)(1)).

One can only: " *. . . presume that the lost information was unfavorable to the party.*" (FRCP 37.A.). In other words, unfavorable to the Defendants. The reports were *subpoenaed* by Defendants. (NRS 199.220 does not allow destruction of evidence).

But, I filed these 2 important reports and they ***are*** on the record, numerous times, and are "testimonial" under the 'Confrontation Clause' framework established in *Crawford v. Washington*, 541 U.S. 36 (2004).

Your decisions affect more people than just the opposing litigants in this case. With United States Supreme Court intervention, **human beings** from all walks of life will no longer be thrown out of their careers and society, by corporate greed (*Defendants QUEST/HIATT*), ignorance, and false statements made in declaration under penalty of perjury. (*Defendants Nevada State Athletic Commission/Marc Ratner/ Dr. Margaret Goodman*).

Wikipedia, Mainstream Media, and Social Media seem to have clouded the truth, thereby undermining the judicial clarity and authority of Judge and Jury.

TOMMY's case is of **national importance**. As a result of TOMMY's death, this case challenges OUTDATED, UNCONSTITUTIONAL 'HIV' POLICIES, unjust STIGMA, and Defendants' fraudulent negligence.

Will this Court uphold The Constitution and "Equal Justice For All", and set the record straight for TOMMY, his Legacy, his family, and fans?

Yours faithfully,

Patricia Morrison, Widow,

Administratrix for the Estate of Tommy Morrison

REASONS FOR GRANTING THE PETITION

I. STATEMENTS BELOW MADE UNDER PENALTY OF PERJURY

Pursuant to Rule 1 this case should have been decided in favor of TOMMY on September 08, 2016. Defendants have concealed decades of known scientific data from the court below. QUEST *et al.*, have known for decades that its testing of: RNA, DNA, ANTIBODIES, or genetic material, are not 'infectious'. The presence of the actual ***whole 'HIV' virus*** itself is required in order to infect other cells.

1. June 08, 2016: Case 2:14-cv-01207-RFB-PAL Document 174 Filed 06/08/16 Page 7 of 50

"Plaintiff now recognizes that neither the State Defendants nor the Quest Defendants ever diagnosed Mr. Morrison as carrying the HIV Virus. (CD #105-1,10-13). Plaintiff additionally agrees with the Defendants that Mr. Morrison was never diagnosed with the human immunodeficiency virus in Las Vegas in February 1996 by any of the Defendants. (CD #105-1,14:12-16)."

2. Quest Diagnostics, Docket #175-11, June 08, 2016

"Information from a laboratory-initiated report of a CD4+ T-lymphocyte count is insufficient for reporting a case of AIDS."

3. September 08, 2016: Honorable Judge Richard F. Boulware II

"We wouldn't even be having this discussion if the test was specific for the existence of the virus or not. *That's obviously why there's even the possibility of a claim.* ***The tests didn't test for the virus.***"

II. NEW STATEMENTS; NEW STUDIES; NEWLY REVEALED DECADES OF MEDICAL INFORMATION MADE BY PROFESSIONAL MEDICAL ORGANIZATIONS

Weighing decades of known medical information this Court can end outdated, unconstitutional HIV

Policies, stigma and discrimination in nearly every phase of someone's life that has been 'regarded as' "HIV positive".

1. **Carl Dieffenbach, Ph.D., Director of the Division of AIDS at NIH's National Institute of Allergy and Infectious Diseases (NIAID)**
   22nd International AIDS Conference (AIDS 2018)
   "RNA and DNA aren't infectious. They're only genetic material, and **not the whole virus**. You need the ***whole virus*** in order for HIV to infect a living cell. It's like finding a human leg on the ground and thinking it can walk. You need the whole body, not just a leg to walk."

2. **Centers for Disease Control and Prevention (CDC)**

   - **MMWR/Vol.57, 2008.** "Oral Reports of prior laboratory test results are not acceptable".

   - **Final Rule Removing HIV Infection from US Immigration, 2010.** "CDC removed HIV infection as a communicable disease of public health significance due to current scientific knowledge of the disease."

3. **City of Omaha, Omaha Police Department and UNMC, University of Nebraska Medical Center September 07, 2017,** "Our goal is independent, efficient and timely evidence testing," said Police Chief Todd

Schmaderer, "We have a proven track record with **UNMC**. This agreement enhances our crime lab services and has opportunities to expand further."

4. Dr. Anthony Fauci, Director, NIAID, NIH, September 2017, and April 25, 2018

- "From a practical standpoint, the risk is zero. So, don't worry about it."
- "'"U=U" Undetectable equals Untransmittable"
- "The science really does verify and validate U=U."

5. Dr. M. Owen Assistant Director of Laboratory Sciences NCHHSTP, February 2018

- "Viral Load tests are not actually approved for screening or making a diagnosis."
- "In 1996 there was not a CD4 test kit."
- "CD4 counts . . . are not specifically for diagnosing infection with HIV."
- "It is possible to have very low CD4 counts caused by other diseases such as cancer, other infectious diseases, genetic disorders, etc."

6. Joseph Williams et al., Clin. Diag. Lab. Immuno., July 1999

"Cows, Goats, and Baby proteins react positive to the Elisa HIV Test."

7. **Mayor of Omaha, Nebraska, September 07, 2017.**
   Channel 7 News
   "UNMC is recognized nationally for its quality of work," said Mayor Stothert. "This agreement provides the tools and the independent staff we think are so crucial. The evidence needed to achieve a conviction rate that matches our high arrest rate will be reliable and accurate. *Juries will trust the evidence.*"

8. **Rich J., et al., Journal Ann.Int.Med., 1999**
   "viral load tests for HIV-1 were neither developed or evaluated for the diagnosis of HIV infection."

9. **World Health Organization, 2006**
   "Laboratory-initiated reporting alone will be insufficient for reporting HIV, as other surveillance information from the healthcare provider or medical records will be required."

   AND:

10. **Jose Ribalta, Professional Boxer, 2017**
    https://www.facebook.com/jose.ribalta/posts/2045512955478703. Jose Ribalta admits to being covered in TOMMY's blood during a sparring session, and was forced to test for HIV. Ribalta's results returned **undetectable**.

III. NEW COURT DECISIONS, HOLDING THIS PETITION PENDING COURTS' CONSIDERATION IS CONSISTENT WITH *THIS* COURT'S PRACTICE

In the alternative, Petitioner asks this Court to hold TOMMY's case pending a decision in *Harrison v. Matthis*. This Court has in recent years engaged in this very sort of procedure – granting a petition for rehearing following a denial of certiorari, and holding the formerly denied case pending the decision in a newly granted case. Thus, if this case is decided in favor of Outdated HIV Policies, those decisions could justify granting TOMMY's petition, and vacating and remanding the decision below.

1. ***Alex M. Azar, II, Secretary of Health and Human Services v. Allina Health Services, et al.,***
   Case: 17-01484
   Certiorari granted on a *notice-and-comment* rulemaking case.

2. ***DeWayne Johnson v. Monsanto Company*, Case: 3:16-cv-01244**
   MONSANTO withheld scientific data; acted with malice or oppression; "fought science" for years. The Jury ruled Monsanto was responsible for "negligent failure" and knew or should have known that its product was "dangerous". Years of deception was now over. Johnson's case was particularly significant ***because a judge allowed his team to present scientific arguments***.

Morrison v. Quest et al.,
Case: 17-1537
QUEST withheld scientific data; acted with malice or oppression; "fought science" for years. This Court ruled QUEST was responsible for "negligent failure" and knew or should have known that its tests didn't test for the HIV Virus, and its 'lab reports' falsifying 'HIV infected' status were "dangerous", and misleading. Years of deception was now over. Morrison's case was particularly significant ***because the U.S. Supreme Court Justices allowed MORRISON to present scientific arguments***.

3. ***Doe et al. v. James N. Matthis et al.,***
Case: 1:18-cv-01251 (2018)
Court Rules Case Challenging Defense Department's Discriminatory HIV Policies ***Can Proceed***.
"The Constitution does not permit this denial of equal protection and, therefore, Plaintiffs must proceed to the merits to eradicate this invidious form of discrimination." Docket 57-1 Filed 09/12/18 Page 7 of 9 ID# 723.

4. ***Harrison et al. v. James N. Matthis et al.,***
Case. 1:18-CV-00641 (2018)
Court Rules Case Challenging Defense Department's Discriminatory HIV Policies ***Can Proceed***.
"The Constitution does not permit this denial of equal protection and, therefore, Plaintiffs must proceed to the merits to eradicate this invidious form of discrimination." Docket 57-1 Filed 09/12/18 Page 7 of 9 ID# 723.

5. ***Lucero v. Early*,**
873 F.3d 466, 471 (4th Cir.2017)
Vacating a dismissal because the district court failed to "take account of the factual dispute" and determine the appropriate level of scrutiny to apply.

6. ***Melson v. Allen*, 130 S.Ct. 3491 (2010);**
***Epps v. United States*,**
543 U.S. 1116 (2005)
Where certiorari had been denied, but a petition for rehearing was granted, eventually certiorari was granted, with the case being vacated and remanded in light of new precedent.

IV. THIS COURT MISSED "KEY FACTS" THAT IT SHOULD HAVE CONSIDERED IN MAKING ITS DECISION

Since this Court derives its legitimacy from the substance of its rulings, and the quality of its deliberations, this Court should grant this Petition. Material facts overlooked and omitted on which this Case was heard are material to the decision of this Case:

1. There is not a shred of record evidence indicating that the ***'whole'* virus** was ever found by Defendants in TOMMY between 1989, 1996, and 2013, that is scientifically required for a person to be "infectious", in or out of the boxing ring.

2. When a (boxing) license is required by law, pursuant to Title 18 Chapter 233B Nevada Administrative Procedure Act. NRS 233B.031, Defendant Nevada State Athletic "Commission", must comply with

the same procedures governing formal rulemaking and adjudication. This includes notice-and-comment. **In 1996, *NAC 467.027* did not require HIV testing.** *See App.1. Petitioner's Reply Brief, Writ of Certiorari.* It is well settled under Nevada law that suppression or nondisclosure of a material fact, which a party is bound in good faith to disclose, is equivalent to a false representation. *See Villaton v. Bowen*, 70 Nev. 456, 273 P.2d 409, 414 (1954); and *Midwest Supply, Inc. v. Walters,* 89 Nev. 210, 510 P.2d 876, 878 (1979), https://administrativelaw.uslegal.com/administrative-procedure-acts/nevada.

3. This divided Court accepted a WAIVER, and erred in not requesting a BIO from Defendants Nevada State Athletic Commission through its Counsel, the *Attorney General's Office*.

V. IMPORTANT QUESTIONS LEFT WITHOUT CONCLUSIVE DETERMINATION STATUTE OF LIMITATIONS

1. Latent and Progressive medical conditions conclude that nothing bars or should bar claimants from filing claims. *See Lisa Lee Mines v. Director*, *OWCP*, 86 F.3d 1358 (4th Cir.1996), *where* no diagnosis made cannot trigger a statute of limitations.

2. Defendants have to establish an HIV diagnosis was communicated to TOMMY on Feb. 10, 1996, for Petitioners claim to be time-barred. Defendants claim, 20 years later, no diagnosis of 'HIV' was ever made.

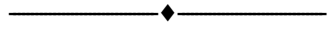
3. Defendants fraudulently apply ***NAC 467.027(3)(b) to this case and not NAC 467.027,*** to justify their actions in 1996. A rule that is arbitrary, capricious contrary to Constitutional right, power, privilege and immunity; unsupported by substantial evidence; violating mandatory notice-and-comment rulemaking, and is the basis of this lawsuit. *See* 42 U.S.C. §12182(a).

4. Defendants erroneously state July 15, 2011, commences the statute of limitations, when "Dr. Voy" emailed TOMMY stating he had not diagnosed him with HIV on February 10, 1996. But, this case is not about "VOY". Defendants fraudulently named VOY on Exhibit "QD1". VOY ***never*** drew blood, ordered testing, received a phone call or lab report, contrary to Defendants' statements made under ***penalty of perjury***.

5. This claim is subject to a ***four-year*** federal statute of limitations rather than Nevada state's personal injury statute of limitations. Petitioner has shown this case is protected under ADA "regarded as" prong. *See Sutton v. United Airlines*, 527 U.S. 471, 489 (1999). *See* 42 U.S.C. §12102(3)(A).

6. 4 years from July 15, 2011, allowed Petitioner to file by ***July 15, 2015****, alternatively*, 4 years as of **September 17, 2013**, the **Final Diagnosis** and discovery of Defendants' fraudulent negligence, by ***September 17, 2017***.

THIS CASE WAS TIMELY FILED
ON: July 24, 2014.



CONCLUSION

TOMMY's Case mirrors *Bragdon v. Abbott*: "This Court's evaluation is constrained by the fact that it has not had briefs and arguments directed to the entire record. A remand will permit a full exploration of the issues through adversary process." P.21-29. 107 F.3d 934, vacated and remanded. KENNEDY, J., delivered the opinion of the Court, STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined.

For the foregoing compelling reasons, and those stated in the Petition and Reply Brief, I find that I must fall upon the mercy and astute judicial intelligence of this fair Court to grant this Petition. I believe the original case was dismissed because the Honorable Judges were denied all of the indisputable facts, that at that time, they would have in their infinite wisdom, granted a favorable decision.

Most Respectfully Submitted,

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OCTOBER 23, 2018

CERTIFICATE OF PETITIONER, PRO SE

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in the Supreme Court Rule 44.2.

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OCTOBER 23, 2018