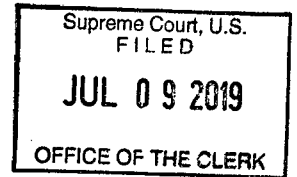


No. 19-5187

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



ENOMA IGBINOVIA — PETITIONER
(Your Name)

vs.

JAMES G. Cox, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ENOMA IGBINOVIA

(Your Name)

SOUTHEAN DESERT CORRECTIONAL CENTER

(Address)

INDIAN SPRINGS, NEVADA 89070

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

- (1) when statute of limitations begins to run where injury and facts to injury were belatedly discovered due to respondents' fraudulent concealment from the injured party (petitioner) intentionally by respondents, so to obstruct petitioner's ability to bring his suit in a timely fashion? As it was in this case and for this court to determine when statute of limitations began to run in this case due to respondents' fraudulent concealment.
- (2) whether the intentional and deliberate creation, introduction and use of a known fabricated and falsified evidence fraudulently concealed and used to remove petitioner from general population (GP) and used to place him into administrative segregation and into a special security housing unit "High Risk Potential (HRP) status," for six-years-ten-months-eight-days absent misconduct, was a continuing violation throughout the entire time and duration of time petitioner spent in the false solitary confinement that was intentionally based on the fabricated evidence knowingly created and introduced and used? As it was in this case and for this court to determine if this circumstance is a continuing violation?
- (3) whether respondents are justified and could at any time and/or as retaliation create a known fabricated and false evidence and use same to remove petitioner from GP absent misconduct and place him into solitary confinement for six-years-ten-months-eight-days absent misconduct? As it was in this case and for this court to determine if respondents have such authority and justification to carry out such act without infringing petitioner's United States constitutional rights?
- (4) whether respondents' refusal in this case to produce relevant documentary and audio evidences in their custody and refusal to answer relevant discovery requests in this case that could have either proven or disproven this case must be held against them, in the sense that the evidences were not favorable to respondents, and whether their refusal must construe the evidences as established facts in favor of the petitioner for the purpose of the case? As it was in this case and for this court to make this determination in this case.
- (5) whether the use of a known fabricated and false evidence created solely for the purpose of unlawfully and fraudulently depriving petitioner of his liberty from general population into solitary confinement for six-years-ten-months-eight-days absent misconduct and no evidence of misconduct and as retaliation by respondents, was the normal daily routine and function of prison operations. And if prison administrators have the authority to do such act without infringing petitioner's United States constitutional rights. As found by the magistrate judge and dismissed as immaterial for limitations purposes and adopted by the district court judge? As it was in this case and for this court to determine whether this act by respondents violated petitioner's United States constitutional rights.
- (6) whether the guilty finding of the MJS charge (possession of contraband to wit a cellular telephone) without a shred of evidence to support the charge or its guilty finding and sanctioning petitioner to 15 days disciplinary detention and 730 days disciplinary segregation while already on the ultra punitive HRP status housing can stand without a shred of evidence or some evidence on the record to support this charge and its guilty finding, and whether this was the normal daily routine and function of prison operations. And if prison administrators have the authority to carry out such act without infringing petitioner's United States constitutional rights. As found by the magistrate judge and dismissed as immaterial for limitations purposes and adopted by the district court judge? As it was in this case and for this court to determine whether this act by respondents was barred by statute of limitations and if it violated petitioner's United States constitutional rights.
- (7) whether petitioner's motion to appoint counsel filed to the Ninth Circuit Court of Appeals should have been considered to help and better present and sharpen the issues on appeal for the interest of justice.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[☒] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- (1) JAMES G. COX
- (2) DAVE MOLNAR
- (3) HARRY CHURCHWARD (Formerly Known As HARRY BUSH)
- (4) ELDON K. MCDANIELS
- (5) DEBORAH BROOKS
- (6) RENEE BAKER
- (7) CLAUDE WILLIS
- (8) MICHAEL OXBORROW
- (9) ROBERT HUSTON
- (10) GREG MARTIN
- (11) MICHAEL B. KOEHN
- (12) GLORIA CARPENTER
- (13) CHERYL MAGNUM

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-8
REASONS FOR GRANTING THE WRIT	9-24
CONCLUSION.....	25

INDEX TO APPENDICES

- APPENDIX A — Ninth Circuit Court of Appeals Order Dismissing Petitioner's Appeal As Frivolous.
- APPENDIX B — District Court Order Accepting and Adopting Magistrate Judge Report And Recommendation And The Judgment In A Civil Case.
- APPENDIX C — Magistrate Judge Report And Recommendation.
- APPENDIX D — Ninth Circuit Court of Appeals' order Denying Motion For Reconsideration En Banc on Behalf of The Court.
- APPENDIX E — District Court Case screening order Reflecting The Constitutional Provisions Involved In The Case.
- APPENDIX F — Ninth Circuit Court of Appeals' Previous Precedent Dealing with Same Identical HRP status condition where The Court Found Continuing Violation Based on The Continuation of The HRP status Condition/confinement. Lisle v. E.K. McDaniels, 681 Fed. Appx. 611; 2017 U.S. App. Lexis 4027 (unpublished).

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- Donaldson v. O'Connor, 493 F.3d 507, 529 (5th Cir. 1974), Vacated on other Grounds 422 U.S. 563, 95 S. Ct. 2484 (1975) (Cited At Page 9 And others).
- Edmonson v. Coughlin, 21 F. Supp. 2d 242, 246 (W.D. N.Y. 1998) (Cited At Page 13 And others).
- Abiff v. Slaton, 806 F. Supp. 993, 996 (N.D. Ga. 1993) Aff'd, 3 F.3d 443 (11th Cir. 1993) (Page 13).
- Lisle v. E.K. Mc Daniels, 681 Fed. Appx. 611, 2017 U.S. App. Lexis 4027 (unpublished) (Page 14 And others).
- Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001) (Page 15 And others).
- Burnsworth v. Gunderson, 179 F.3d 771, 775 (9th Cir. 1999) (Page 15 And others).
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- Bradford v. Scherschlicht, 803 F.3d 382, 386 (9th Cir. 2015) (Page 15 And others).
- Nonnette v. Small, 316 F.3d 872 (9th Cir. 2001) (Page 15 And others).
- Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 288-84, 50 L. Ed. 2d 471, 97 S. Ct. 568 (1977) (Page 18).
- Bruce v. 1st, 351 F.3d 1283 (9th Cir. 2003) (Page 18).
- Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (Page 18).
- Bell v. Wolfish, 441 U.S. 520, 60 L. Ed. 2d 447, 99 S. Ct. 1861 (1979) (Page 18).

STATUTES AND RULES

- Schroeder v. McDonald, 55 F.3d 454, 461-62 (9th Cir. 1995) (Page 18).
- Barnett v. Centoni, 31 F.3d At 816 (Page 18).
- Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1983) (Page 18).
- Ashland Oil Co. of Cal. v. Union Oil Co. of Cal., 567 F.2d 984, 988 (Temp. Emer. Ct. App. 1977), Cert. Denied, 435 U.S. 994, 56 L. Ed. 2d 83, 98 S. Ct. 1644 (1978) (Pages 22-23).
- Western Mt. Oil Inc. v. Gulf Oil Corp., 575 F. Supp. 813, 1983 U.S. Dist. Lexis 17837 (D. Nev. 1983) (Page 23).
- Guerrero v. Gates, 442 F.2d 697, 707 (9th Cir. 2006) (Page 23).
- Prescott v. United States, 523 F. Supp. 918, 1981 U.S. Dist. Lexis 9840 (D. Nev. 1981) Aff'd, 731 F.2d 1388 (9th Cir. 1984) (Page 23).
- Nevada Power Co. v. Monsanto Co., 995 F.2d At 1308 (9th Cir. 1992) (Page 23).
- Mosesian v. Peat Marwick, Mitchell & Co., 727 F.2d 873 At 877 (9th Cir.), Cert. Denied, 469 U.S. 932, 83 L. Ed. 2d 265, 105 S. Ct. 329 (1984) (Page 23).
- Sec v. Seaboard Corp., 677 F.2d At 1309-10 (9th Cir. 1982) (Page 24).

OTHER

Statutory Provisions Involved In The Case 1st Amendment (*2), 8th Amendment (*2), And 14th Amendment (*2) In This Case. (Cited At Page 3 And others); see screening order In The Case At Appendix - E.

U.S. Magistrate Judge's Report And Recommendation In The Case. (Cited At Page 7 And others); see same At Appendix - C.

High Risk Potential (HRP) status, Operational Procedure (OP) 434, which Promulgates And Establishes The Criteria For HRP status Consideration And Placement. (Cited At Page 12 And others).

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**: N/A

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 18, 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 8, 2019, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**: N/A

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- (1) 1st Amendment Access To The Grievance Process claims (counts I And II). Please see Attached Appendice E, For The Full Text ^{OF} Constitutional Provisions Involved (Access To The Court).
- (2) 1st Amendment Retaliation claims (Counts I And II). Please see Attached Appendice E, For The Full Text of Constitutional Provisions Involved.
- (3) 8th Amendment Cruel And Unusual Punishment claims (Counts I And II). Please see Attached Appendice E, For The Full Text of Constitutional Provisions Involved.
- (4) 14th Amendment Administrative Segregation Due Process claim (count I). Please see Attached Appendice E, For The Full Text of Constitutional Provisions Involved.
- (5) 14th Amendment Disciplinary Proceedings Due Process claim (count II) Please see Attached Appendice E, For The Full Text of Constitutional Provisions Involved.

STATEMENT OF THE CASE

This Is A Civil Rights Action Alleging That The Respondents Retaliated Against Petitioner For Exercising His Constitutional Rights, By Fabricating Evidence Against Petitioner For Exercising His Constitutional Rights. Where Respondents Knowingly Fabricated Evidence Against Petitioner Used To Deny Him Of His Procedural And Substantive Due Process Rights Under The 14th Amendment. Petitioner was Unlawfully And Fraudulently Removed From General Population (GP) And Placed Into Administrative Segregation (Adseg) on 9/17/2009, Pending High Risk Potential (HRP) status (Solitary Confinement Indefinitely) Placement That was Placed on 9/23/2009 without Evidence of Indicia of Reliability And lasted for six-years - Ten - months - eight - days Absent misconduct And As Retaliation. Petitioner was Further Retaliated Against when on 2/9/2010 Respondents Issued A Known Fabricated And False Notice of charges MJ26 Possession of Contraband (To with A Cellular Telephone) And MJ47 Escape Against Petitioner without A shred of Evidence To support Either charge. Found Petitioner Guilty of The MJ26 Based on Absolutely "NO SINGLE SHRED OF EVIDENCE OR SOME EVIDENCE" And sanctioned Petitioner To 15 Days Disciplinary Detention And 730 Days Disciplinary Segregation while Already on The Ultra Punitive Fraudulent And Unlawful HRP status Absent misconduct.

Violating Petitioner's Substantive And Procedural Due Process Rights And His United States Constitutional Rights In Multiple Categories. See Appendix E, For The Full Context of The Petitioner's Rights That were violated.

After Petitioner was Removed From GP And Placed Into Indefinite HRP status, He was Never Apprise of The Reason He was Placed Into Solitary Confinement other Than safety And security That Did Not Inform Petitioner of Anything. Respondents Intentionally And Deliberately Restricted And Deprived Petitioner of The Ability To Know And learn of The Reason And Evidence And Facts of Reason And Evidence used By Respondents As Basis To Remove Petitioner From GP And Used To Place Him Into Solitary Confinement HRP status For six-years - Ten - months - eight - days Absent misconduct. By Fraudulently Concealing The Reason And Evidence And Facts of Reason And Evidence Used By Respondents As Basis To Remove Petitioner From GP And Placed Into

HAP status And Kept Him There For Six - Years - Ten - Months - Eight - Days Absent misconduct.

Until Petitioner Conducted His own Personal Investigation/Inquiry Exercising Due Diligence After He was set on Inquiry By Respondents' Pleading In His First lawsuit (opposition To Cross Motion, document No. 43; ECF No. 43) Filed on 11/14/2011, As Case No. 3:11-cv-00079 - ECR - RAM. where Respondents made Their Admissions For The First Time After more Than Two Years Since Petitioner's Placement on Indefinite HAP status, of Partial Reason And Evidence used For Petitioner's Removal From GP And Placement Into Indefinite HAP status. while Continuing Their Fraudulent Concealment of Facts surrounding The Reason And Evidence Admitted used In Their Pleading (document No. 43, Case No. 3:11-cv-00079) on 11/14/2011.

which was That The Reason And Evidence Admitted used To Remove Petitioner From GP And Placed Into Indefinite HAP status And used To Keep Him There For six - Years - Ten - Months - Eight - Days By Respondents In Their Pleading (ECF No. 43, Case No. 3:11-cv-00079) Filed on 11/14/2011, was A known Fabricated And false Evidence. That was Intentionally And Deliberately Created, Introduced And used For The Sole Purpose of Fraudulently And Unlawfully Depriving Petitioner of His Liberty By Respondents As Retaliation Absent misconduct. As Petitioner later discovered Exercising Due Diligence.

Petitioner's Inquiries Into The Fabricated Evidence After He was set on Inquiry By Respondents' Pleading (ECF No. 43, Case No. 3:11-cv-00079) on 11/14/2011, was Also Impeded And obstructed By Respondents. To Prevent Petitioner From Discovering Their Fabricated Evidence used And Fraudulently Concealed.

During Petitioner's Removal From GP And Placement Into Indefinite HAP status On 9/17/2009 And 9/23/2009 And Through The Duration To Date of Respondents Partial Admissions on 11/14/2011, while Continuing Their Fraudulent Concealment of Facts surrounding Their Partial Admissions made on 11/14/2011 And At All Times Thereafter. Petitioner was Not Apprise And was unaware why He was

Removed From GP And Placed Into Indefinite HRP status until He made His Discovery of Facts After He was set on Inquiry By Respondents' Admissions In Their Pleading (ECF No. 43, Case No. 3:11-cv-00079-ECR-RAM) Filed on 11/14/2011.

Petitioner Had No other way of Knowing The Reason And Evidence And Facts Surrounding Same, Used By Respondents To Remove Him From GP And Used To Place Him Into Indefinite HRP status. Because Petitioner was Never Apprise of The Reason And Evidence Used By Respondents And / or Facts Surrounding Reason And Evidence later Admitted Used By Respondents, After more Than Two Years Since The Unlawful Indefinite HRP status Placement As They Continued Their Fraudulent Concealment. Until Petitioner Discovered The Facts Surrounding The Reason And Evidence Admitted Used To Remove Him From GP And Used To Place Him Into Indefinite HRP status, After He was set on Inquiry By Respondents on 11/14/2011, In Their Pleading Filed with The Court In Petitioner's First lawsuit (ECF No. 43, Case No. 3:11-cv-00079-ECR-RAM). "which was That The Reason And Evidence Respondents Admitted In Their Pleading on 11/14/2011 (ECF No. 43, Case No. 3:11-cv-00079) used To Remove Petitioner From GP And Placed Into Indefinite HRP status For six-years-Ten-months-Eight-days was A known Fabricated And False Evidence." Intentionally Created By Respondents For The "SOLE" Purpose of Depriving Petitioner of His Liberty Under A Pretext. which was Ultimately Used To Deprived Petitioner of His Liberty Into Solitary Confinement (Indefinite HRP supermax status) For six-years-Ten-months-Eight-days Absent misconduct At All Times.

It should Be worth mentioning To This Court That Respondents Did Not challenge Nor dispute The Facts And Allegations Against Them In This case. Rather, Respondents ["ONLY"] Argument Through out The Entire Pleading Proceedings was Based on statute of limitations And Res Judicata That Do Not Apply Here In This Case.

The lower Court Abused Its Discretion when It Failed To Consider Petitioner's ["TIMELY"] Filed objection To The Magistrate Judge's Report And Recommendation Before Adopting The Report And Recommendation. Entering Judgment Dismissing Petitioner's Case under statute of limitations That Does Not Apply In This Case.

On July 24, 2018, The Magistrate Judge Issued And Filed Its Report And Recommendation (R And R) In This Case. (ECF No. 141). In The R And R, At Pg. 16, lns. 10-13, The Magistrate Judge Gave The Parties Fourteen (14) Days From The Day of Receipt of The R And R To File Their objections. see ECF No. 141, At Pg. 16, lns. 10-13.

On July 27, 2018, Petitioner was served And was In Receipt of A Copy of The R And R (ECF No. 141) In This Case.

On August 8, 2018, Petitioner Processed And mailed His objection To The Magistrate Judge's R And R To The District Court clerk For filing Through The southern Desert Correctional Center legal mailing Process with Bras slip No. 2313165 Dated August 8, 2018.

On August 13, 2018, Petitioner's objection To The Magistrate Judge's R And R was Filed By The District Court Clerk In District Court (ECF No. 144) And on Same Day On August 13, 2018, The District Court Judge Adopted The Magistrate Judge's R And R In Its Entirety And Entered Judgment In The Case. Granting Respondents' summary Judgment motion Dismissing Petitioner's Entire Case under statute of limitations without "Any" Consideration To Petitioner's "Timely" Filed Objection To The R And R.

District Court's Complete Disregard To The Petitioner's Timely Filed objection To The Magistrate Judge's R And R Before Fully Adopting The R And R In The Case was An Abuse of Its Discretion.

District Court's Contention In Its Order Dated August 13, 2018, Indicating That To Date of Its Order On August 13, 2018 Dismissing The Case That No objection To The R And R Had Been Filed Is "UNFOUNDED". Because on Same Day

District Court Issued And made Its Ruling/Order On August 13, 2018 (ECF No. 142), Petitioner's objection To The R And R Had Arrived At The Clerk of Court's office And was Filed with The Court By The Clerk On August 13, 2018 (ECF No. 144).

Therefore, District Court Ruling/Order In This Case Requires A Review In This Court.

The Court of Appeals Refusal To Appoint Counsel To Assist Petitioner To sharpen The Issues And claims In This Case And To Have Presented The Facts To The Court As They were, was An Abuse of Its Discretion. Because Not only Does This Case Have merits, This Case Is Not Barred By statute of limitations.

Further, The Ninth Circuit Court of Appeals' Ruling Conflicts with This Court's Previous Ruling And Precedents. As well, The Ninth Circuit Court of Appeals Ruling In This Case Conflicts with A Previous Ninth Circuit Court of Appeals Precedent Under A similar And Identical HRP status Condition, And Conflicts with other United States Circuit Courts of Appeals Under similar Conditions. As such, This Honorable Court should Consider A Review of This Case.

For All Facts Supported By Evidences As stated Above see ECF No. 114, Case No. 3:16-cv-00497-MMD-VPC.

REASONS FOR GRANTING THE PETITION

This Court Has Found And Recognized Continuing Violation Under False Imprisonment For The Duration of The False Imprisonment, And This Court Has Also Found And Recognized Belated Discovery of Facts And Injury Due To Fraudulent Concealment, And Has Allowed These Line of Cases Filed outside The statute of limitations Period To Proceed In Its Previous Precedents And Affirmation of U.S. Court of Appeals. It Is of National Importance And Dimension For This Court To Hear This Case And Address And Reaffirm These Important Questions of law, Under The Provisions of Continuing violation Based on False Imprisonment And Belated Discovery of Facts And Injury Due To Fraudulent Concealment As They Exist In This Case. which The lower Courts Have Failed To Recognize In This Case.

It Is of National magnitude And Importance For This Court To Address This Case And This matter of A significant Questions of law. To Ensure That similarly situated Prisoners As The Petitioner Never Have To Experience And Suffer Through what Petitioner Had To Suffer Through For six-years - Ten - months - Eight - Days "ABSENT MISCONDUCT." And To Ensure That similarly situated Prisoners As The Petitioner Including The Petitioner, who Are Unlawfully Retaliated Against And Punished without Just cause Have A voice, To seek lawful Judicial Redress Against Unlawful Conducts And Acts Committed Against Them Under The Color of law, without Being Impeded And Tricked To Forfeit Their Rights To File A suit By Respondents And similarly situated Individuals. To Further ensure That similarly situated Individuals As Respondents And The Respondents In This Case Acting Under The Color of law, who Abuse Their Authority Unlawfully For self And personal Gains And Interests Under The Color of law, Are Held Accountable And Brought To Face Justice And Exposed For Their Unlawful Conducts. For The Uprightness of The Justice system of The United States.

In Donaldson v. O'Connor, 493 F.3d 507, 529 (5th Cir. 1974), Vacated on other Grounds, 422 U.S. 563, 95 S.Ct. 2484 (1975) (Holding That claim For False Imprisonment was Continuing violation And Thus Not Barred By statute of limitations). This

9.

Court Affirmed The 5th Circuit's Finding That claim For False Imprisonment was Continuing violation And Thus Not Barred By statute of limitations.

In This Instant Case seeking Certiorari, Petitioner Filed His Complaint In state District Court As Case No. CF-1605003, White Pine County, Ely, Nevada, on June 28, 2016, while Petitioner was still Housed In solitary confinement Under The False Imprisonment / Solitary Confinement That was ongoing At The Time. which was later Removed To Federal Court on August 23, 2016, By Respondents (see ECF 1-2). Petitioner was only Removed From The False Imprisonment / Solitary Confinement on July 25, 2016, when Respondents Became Aware of The Pending lawsuit Filed Against Them on June 28, 2016 (ECF No. 114). The Record In This Case Corroborates And Supports Petitioner's Assertion And claims. See ECF No. 114.

As such, The lower Courts Refusal To Adhere To This Court's Already established Precedent And Affirmation of other United States Circuit Courts of Appeal Rulings, Holding That "claim For False Imprisonment [was] continuing violation And Thus Not Barred By statute of limitations, specifically, Ninth Circuit Court of Appeals Dismissal of Petitioner's Appeal As Frivolous Based on statute of limitations, Conflict with This Court's Previous Ruling And Precedent And Affirmation". See Donaldson v. O'Connor, 493 F.3d 507, 529 (5th Cir. 1974), Vacated on other Grounds 422 U.S. 563, 95 S. Ct. 2486 (1975) (Holding That claim For False Imprisonment was Continuing violation And Thus Not Barred By statute of limitations).

Petitioner's Removal From GP And Placement Into Indefinite HAP status (solitary confinement) And Retainment There For six-years-Ten-months-Eight-days "ABSENT MISCONDUCT". Was Based On A Known Fabricated And False evidence Created, Introduced And Used For The "SOLE" Purpose of depriving Petitioner of His Liberty Unlawfully By Respondents. In The Magistrate Judge's Report And Recommendation (R And R), At Pages 8 And 9 (Appendix C), "The Magistrate Judge Recognized The False evidence Respondents Admitted used As Basis To Remove Petitioner From GP And Used To Place Petitioner Into Indefinite HAP status That lasted For six-

Years - Ten - months - Eight - Days Absent MISconduct (see ECF NO. 43, Case No. 3:11-CV-00079-ECR-RAM, "Compare To" ECF NO. 114, Case No. 3:16-CV-00497-MMD-VPC)". The Magistrate Judge's Recognition And Dismissal of The Known Fabricated And False Evidence Admitted Used AS BASIS TO Place Petitioner Into Solitary Confinement And Retainment By Respondents, AS Immaterial For Limitations Purposes was Highly Prejudicial And was An Abuse of Discretion.

It was An Error And An Abuse of Discretion when The Magistrate Judge Refused To Inspect The Soundness of Petitioner's Argument (R And R, At Page 8, Lines 17-18) Because Petitioner's Argument And Facts supported By Evidences, were Based on why statute of limitations did Not Apply To This Case. Due To Fraudulent Concealment And Known Creation, Introduction And use of Fabricated And False Evidence And Based on The merits of The Case. Resulting Into False Imprisonment of Petitioner. see ECF NO. 114, Case No. 3:16-CV-00497-MMD-VPC.

Moreover, It was An Error And An Abuse of Its Discretion when The Magistrate Judge Concluded That The Known Fabricated Evidence Falsely Created, Introduced And Admitted used By Respondents And later Proven By overwhelming support of Evidences To Be "False", (see ECF NO. 43, Case No. 3:11-CV-00079-ECR-RAM, "Compare To" ECF NO. 114, Case No. 3:16-CV-00497-MMD-VPC), was Immaterial for limitations Purposes whether Respondents effected Their Retaliation In Part By Falsifying The Medical x-Rays Transfer Approval Casenote. The Medical x-Rays Transfer Approval Casenote Entered Into Petitioner's classification File on 9/1/2009, And Fraudulently Concealed Just Days Prior To The False Confinement Placement And later discovered And Proven To Be A False Medical x-Rays Transfer Approval By Evidences, was The only evidence Respondents Relied Upon And used To Remove Petitioner From GP And Placed Into Indefinite HRP status For six-Years - Ten - months - Eight - Days ABSENT MISconduct. See R And R, At Pg. 9, Lns. 13-24. See Also ECF NO. 43, Case No. 3:11-CV-00079-ECR-RAM, "Compare To" ECF NO. 114, Case No. 3:16-CV-00497-MMD-VPC.

The Magistrate Judge And The lower Courts Failed To Recognize That There Is A substantive Criteria Promulgated For Indefinite HRP status Placement In The Institutional operational Procedure (OP) 434. Petitioner Could Not Have Been Placed On HRP status without violating or committing one of The Promulgated Criteria For Indefinite HRP status Consideration In OP 434 (see Exhibit-27, ECF No. 114, Case No. 3:16-cv-00497-MMD-VPC). And when Petitioner Did Not Commit Such Violation Or Any violation At All For That matter, Respondents Took It upon Themselves Just Before Removing Petitioner From General Population On 9/17/2009, And Thrown Into Indefinite HRP status later on 9/23/2009, To create, introduce And use A known Fabricated And False Casenote file of Medical X-Rays Transfer Approval To Ely Hospital In Petitioner's classification Casenote file on 9/1/2009. which Respondents solely Relied on And Based Their Actions of Removing Petitioner From GP And Placement Into Indefinite HRP status (Solitary Confinement) That lasted For Six-Years-Ten-months-Eight-Days "ABSENT MISCONDUCT". see ECF No. 114, Case No. 3:16-cv-00497-MMD-VPC.

which was where And what Respondents Based Their Unlawful Actions According To Their Admissions Made on 11/14/2011. see Exhibit-04, ECF No. 114, Case No. 3:16-cv-00497-MMD-VPC.

It should Be Noted By This Court That Respondents only Argument In Their Summary Judgment (ECF No. 65, Case No. 3:16-cv-00497-MMD-VPC), And In Their Response To Petitioner's Cross Motion For Summary Judgment (ECF No. 131, Case No. 3:16-cv-00497) was statute of limitations Argument. Respondents Did Not Dispute or challenge The Allegations And claims And/or Dispute The Facts supported By Evidences Presented In Petitioner's Cross motion For summary Judgment (ECF No. 114, Case No. 3:16-cv-00497-MMD-VPC) Because They Are Facts of what Actually occurred And Are All Irrefutable. By Virtue, Respondents Concede All Allegations And claims Against Them As True.

All Evidences Presented By Petitioner In support of ECF No. 114, Case No. 12.

3:16-cv-00497-MMD-VPC, were All obtained From Respondents At The Institution where Petitioner was Housed where The Violation occurred And Are All Irrefutable.

Comparing The Magistrate Judge's Findings In The Report And Recommendation (which was Adopted By District Court In whole And Affirmed By The Ninth Circuit Court of Appeals) To Respondents Admissions made on 11/14/2011 As Basis used For The Petitioner's solitary confinement Placement (while Fraudulently Concealing The Facts Surrounding Respondents' Admissions on 11/14/2011) And Retainment For six - Years - Ten - Months - Eight - Days, At "ECF No. 43, Case No. 3:11-cv-00079-ECR-RAM, And Comparing Respondents Admissions made on 11/14/2011, As Basis used For The Petitioner's Placement Into Solitary Confinement (HAP status) To Petitioner's Cross Motion For Summary Judgment, And All Facts supported By Evidences stated therein, Directly And Unequivocally Contradict Respondents Admissions made on 11/14/2011. That Their Admissions made on 11/14/2011 And Represented To The Court And Petitioner As Facts used As Basis For Petitioner's solitary confinement Placement was Based on fabricated And false Evidences knowingly.

It Is Demonstrated with Irrefutable Evidences That The lower Court Ruling And Decision was An Error And Abuse of Discretion.

In Edmonson v. Coughlin, 21 F. Supp. 2d 242, 246 (W.D.N.Y. 1998), The Edmonson Decision Is consistent with law Holding That claims For Failure To Release on Time And For False Imprisonment Accrue At The Time of Release. Abiff v. Slaton, 806 F. Supp. 993, 996 (N.D. Ga. 1992) Aff'd, 3 F. 3d 443 (11th Cir. 1993) (Citing Donaldson v. O'Connor, 493 F. 3d 507, 529 (5th Cir. 1974) vacated on other Grounds, 422 U.S. 563, 95 S. Ct. 2486 (1975) (Holding That claim For False Imprisonment was Continuing Violation And Thus Not Barred By statute of limitations).

Petitioner's Case seeking Certiorari Parallels All of These line of Cases Holding That claim For False Imprisonment was Continuing Violation And Thus Not Barred By statute of limitations.

Furthermore, The Ninth Circuit Court of Appeals' order Dismissing Petitioner's Appeal As Frivolous Under statute of Limitations Conflicts with This Court's Previous Precedents And Conflicts with other U.S. Circuit Court of Appeals Rulings Citing To This Court's Previous Precedent / Affirmation.

But more Importantly, The Ninth Circuit Court of Appeals order dismissing Petitioner's Appeal As Frivolous Conflicts with A Previous Ninth Circuit Court of Appeals Precedent And Ruling, In A same "Identical Condition of HRP status" From same exact Institution (Ely state Prison) where Petitioner's violation Also occurred As well. There, In A 'same' Identical Condition of HRP status From same exact Institution (Ely state Prison) In Lisle V. E.K. McDaniel, 681 Fed. Appx. 611; 2017 U.S. App. Lexis 4027 (unpublished); Appendix F. Ninth Circuit Court of Appeals Found Continuing violation In HRP status (Solitary Confinement) Condition That was ongoing And Current when Inmate Kevin Lisle In That Case Filed His Complaint And Entertained And Heard That Case on Its Merit. The Court Found Continuing violation In Kevin Lisle's HRP status Condition Case That was currently ongoing At The Time He Filed His Complaint In August 2010 After more Than Nine(9) Years since Kevin Lisle Had Been Placed on The HRP status Condition. which was second of Two claims Presented In Kevin Lisle's Complaint Filed In August 2010 (Appendix F). But The Court Did Not Find Continuing violation where Kevin Lisle Had Been Released ^{In 2001} From A Previous HRP status Condition More Than Two (2) Years Prior To His Filing of His Complaint In August 2010. which was The First of Two claims Presented In His Complaint. see Lisle V. E.K. McDaniel, 681 Fed. Appx. 611; 2017 U.S. App. Lexis 4027 (unpublished). See Appendix F For A copy of Lisle V. E.K. McDaniel. see Also Gutowitzky V. County of Placer, 108 F.3d 256, 259 (9th Cir. 1997). (citation omitted).

Petitioner In This Instant Case seeking Certiorari In This Court Filed His Complaint on June 28, 2016, In State Court while He was still Housed And Under The False Imprisonment / Solitary Confinement And Filed less Than Two Years After The

Removal of The False And Fraudulent HRP status. See 3:16-cv-00497-MMD-UPC. This conflicting Ruling of The Ninth Circuit Court of Appeals Is A Question of law For This Court To Review And Address In This Petition For Certiorari.

As such, This Case should Be Allowed To Proceed Forward For A Review of The lower Court's Ruling And should Be Heard By This Court.
/ / /

Furthermore, In Other Cases Ninth Circuit Court of Appeals Has Recognized The Use of A Known False Information / evidence To Prosecute And/or Incarcerate A Person To Be A Violation of The United States Constitutional Rights. See Devereaux V. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001); Burnsworth V. Gundersen, 179 F.3d 771, 775 (9th Cir. 1999); Constanich V. Dept. of Soc. & Health Servs., 627 F.3d 1101, 1111-12 (9th Cir. 2010) (Relying On Devereaux To Hold That A State Investigator who Deliberately Mischaracterizes witness statements In Her Investigative Report Also Commits A Constitutional Violation); Bradford V. Scherschligt, 803 F.3d 382, 386 (9th Cir. 2015); Nonnette V. Small, 316 F.3d 872 (9th Cir. 2001).

In This Instant Case seeking Certiorari Review, The Magistrate Judge's Findings Recognizing The False/Fabricated Evidence Used By Respondents As Retaliation To Place Petitioner Into HRP status, And Dismissing It As Immaterial For Limitations Purposes (R And R, At Pg. 9, Lns. 13-14), Conflicts with Ninth Circuit Court of Appeals Previous Precedents. Holding That Deliberate False Report/Deliberate Use of False Evidence To Deprive A man of His Liberty Violates The United States Constitution. See The line of Ninth Circuit Court of Appeals Cases cited Immediately Above. And It Also Conflicts with This Court Precedents And other United States Circuit Court of Appeals Decisions/Precedents Holding That claim For False Imprisonment was Continuing violation And Thus Not Barred By Statute of limitations. Edmonson V. Coughlin, supra.; Abiff V. Slater, supra.; Donaldson V. O'Connor, supra.

Moreover, The Magistrate Judge's Findings In The A And R, At Pg. 9, lns. 14-16, Indicating That "The Adverse Action At The Heart of Plaintiff's Retaliation claim Is Defendants' Decision To Place Plaintiff In HRP Supermax status, Not Their Alleged Evidence Fabrication": "CONFLICTS AND DIFFERS" From The Adverse Action stated And Asserted In Petitioner's First Amended Complaint (ECF 1-2) And His cross Motion For summary Judgment (ECF No. 114), And "CONFLICTS AND DIFFERS" From The Adverse Action stated In Petitioner's Retaliation claims By The District Court In The Screening Order In This Case (ECF No. 25; Appendix E). which states As follows In verbatim:

"The Court Finds That Plaintiff states A colorable Retaliation claim Based on The Allegations, On September 22, 2009, Plaintiff Had An Interview with Molnar And Churchward. At That Interview, Plaintiff Threatened To file Grievance And sue Molnar After Plaintiff Found out That Molnar Had Used Plaintiff's Name As A witness Against The Aryan warriors. Based On The Allegations, Both Molnar And Churchward Threatened To put Plaintiff Into Indefinite HRP Supermax status If He did Not Give Them Information About The Aryan warriors. when Plaintiff did Not Provide Them with Information, Prison officials put Plaintiff Into Indefinite HRP Supermax status. For Screening Purposes, The Court will Permit The Retaliation claim To Proceed Against All of The Defendants Because It Appears That Defendants may Have Fabricated charges Against Plaintiff In Retaliation For Threatening To sue Molnar. The Retaliation claim will Proceed Against Defendants Cox, Molnar, Churchward, McDaniel, Brooks, Baker, Willis, Oxborrow, Huston, Martin, Koehn, Carpenter And Magnum. (see ECF No. 25, At Pg. 9, lns. 19-28 And Pg. 10, lns. 1-3, Case No. 3:16-cv-00497-MMD-VPC; Appendix E)."

The Magistrate Judge's Findings In The A And R, At Pg. 9, lns. 14-16, Concluding

That The Adverse Action At The Heart of Plaintiff's Retaliation claims Counts I And II Is Defendants Decision To Place Plaintiff In HRP supermax status, Not Their Alleged Evidence Fabrication, was An Error. Because The Retaliation claims (Counts I And II) As stated In The Amended Complaint And As Found In The screening order By The District Court, were Based On Respondents Fabricated A Known False Information Used To Charge Petitioner with A Misconduct That Did Not occur or Exist For Exercising His Constitutional Right of Freedom of speech. Resulting Into Petitioner's Unlawful Placement Into Indefinite HRP supermax status For six-years-Ten-months-Eight-days "ABSENT MISCONDUCT," And Also Resulted Into Respondents Issuing A Known False Notice of charges MJ26 Possession of Contraband (To with A Cellular Telephone) And MJ47 Escape, And later Dismissed The MJ47 And Found Petitioner Guilty of The MJ26 ABSENT MISCONDUCT without A shred of evidence. And Sanctioned Petitioner To 15 Days Disciplinary Detention And 730 Days Disciplinary Segregation while Already On The Unlawful Indefinite HRP supermax status. The Retaliation claims (Counts I And II) And The Fabricated Evidence Intertwined with One Another As Cause And Result, And Respondents Refusal To Produce The Audio Recording of The Interview of 9/22/2009, of Petitioner And Respondents Dave Mohr And Harry Churchward That Is In Their Custody, In The Discovery Request For Production of Documents Request Nos. 4 And 5 (ECF No. 90). where Respondents At That Interview on 9/22/2009, made their Threats And Promises To Place Petitioner Into Indefinite HRP supermax status If He Did Not stop Complaining And If He Did Not Produce Information For Their Alleged Investigation Against Aryan warriors Can Be Found; And The Magistrate Judge's Arbitrary Dismissal of Petitioner's 'Motion To Compel' Respondents Responses To Discovery Requests And Request For Production of Documents, which Respondents Failed And Refused To Produce was Very Critical And Highly Prejudicial In This Case. And Requires This Court's Review. see Exh. 43, ECF No. 114 And ECF No. 105.

This Court Has Recognized That Retaliation By A State Actor For Exercise of A Constitutional Right Is Actionable Under 42 U.S.C. § 1983 Even If The Act, when Taken For Different Reasons, would Have Been Proper. Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 283-84, 50 L. Ed. 2d 471, 97 S. Ct. 568 (1977). Retaliation claims Proceed In Three Analytical steps.

The Ninth Circuit Court of Appeals Employs A Modified Version of Mt. Healthy's shifting Analytical Approach To claims By Prisoners Against Prison officials. In such Cases, The Plaintiff Bears The Burden of Pleading And Proving The Absence of legitimate Penological Goals For The Conduct of which He Complains. Bruce v. 1st, 351 F.3d 1283 (9th Cir. 2003) (quoting Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995)). After All, If No legitimate Goal Underlay The Adverse Action, Then one Reasonably may Infer That The Goal was Retaliation. If The Plaintiff meets This Burden, Then The Burden Shifts To The Prison official Defendants To Show By A Preponderance of The Evidence That The Allegedly Retaliatory Action was Narrowly Tailored To serve A legitimate Penological Purpose, such As maintaining Prison Discipline And Suppressing Criminal Activities By Inmates. See Bell v. Wolfish, 441 U.S. 520, 60 L. Ed. 2d 447, 99 S. Ct. 1861 (1979); Bruce, 351 F.3d At 1288; Schroeder v. McDonald, 55 F.3d 454, 461-62 (9th Cir. 1995); see Also Pratt, 65 F.3d At 806, Barnett v. Centoni, *supra*, 31 F.3d At 816; Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1983). This Is The Equivalent of The Final Mt. Healthy Analytical step, In which Defendants seek To show That They would Have Acted In The same manner Even If The Plaintiff Had Not Engaged In Protected Conduct.

In Sum, Plaintiff must Prove The Following Elements In Support of His Retaliation claims (Counts I And II):

1. He Took A Constitutionally-Protected Action;
 2. Defendants Thereafter Took Adverse Action Against Plaintiff;
 - And 3. Defendants Did Not Intend To Advance Any legitimate Goal. If Plaintiff Does So, Defendants may seek
- 18.

To show By A Preponderance of The Evidence That Adverse Action was, In fact, Narrowly Tailored In The Pursuit of A legitimate objective.

In This Instant Case seeking Certiorari And Review of The lower Court's Decision, The Magistrate Judge's Recognition of The Fabricated And Falsified Evidence Respondents Admitted used In Their own words And Admissions, To Remove Petitioner From GP And used To Place Him Into Indefinite HRP Supermax status, And Dismissed It As Immaterial For Limitations Purposes. Did Not Advance A legitimate Penological Purpose In This Case As Demonstrated Above. The only Argument Respondents Presented In Their Pleading was Statute of Limitations. This Coupled with Respondents Refusal To Produce The Audio Recording of The Alleged Criminal Investigation (Criminal Investigation That Never occurred) Interview on 9/22/2009 That was In Their Custody, And would directly show Respondents' Threats of The HRP Supermax status Placement Against Petitioner. Demonstrates sufficiently That The known Fabricated And Falsified Evidence Recognized By The Magistrate Judge In The R And R, At Pgs. 8 And 9, was Created And used As Retaliation Against Petitioner. And The lower Court Erred when It Dismissed Petitioner's Case Under statute of Limitations As Demonstrated Above.

As such, This Case Requires This Court's Review And Petitioner Prays That Certiorari Is Granted In This Case For A Review of The lower Court Decision And For The Questions of law Involved In This Case For This Court To Answer.
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In Addition, The Magistrate Judge Recognition of The Fabricated And Falsified evidence Under The Retaliation claims (Counts 1 And 11) And Dismissing It As Immaterial For Limitations Purposes (R And R, At Pg. 9, lns. 13-14), And The Magistrate Judge's simultaneous "Failure" To Recognize same Fabricated And Falsified Evidence Under The Petitioner's Due Process Administrative Segregation Claim (Count 1) created A Conflict of Interest only This Court must Review And Answer. Because In This Case The Due Process Administrative Segregation claim (Count 1) originated From 19.

Same Fabricated And Falsified Evidence As The Retaliation claims (Counts I And II) which The Magistrate Judge Recognized Under The Retaliation claims And Dismissed As Immaterial For Limitations Purposes (R And R, At Pgs. 8 And 9). However, Failed To Recognize Same Fabricated And Falsified Evidence Under The Due Process Administrative segregation claims (Count I). This selective Recognition of The Fabricated And Falsified Evidence Under The Retaliation claims (Counts I And II), And Not Under The Due Process Administrative Segregation claim (Count I), where Both claims originated From Same Fabricated And Falsified Evidence creates A Conflict of Interest And A Question of law That Only This Court must Address. And The District Court screening order In This Case states As Follows Under the Due Process Administrative segregation claim (Count I) (Id Verbatim:

"The Court Finds That Plaintiff states. A colorable Due Process - Administrative segregation claim. Based on The Allegations, All of The Defendants Created False Evidence To move Plaintiff Into And keep Him In Administrative segregation. Moreover, Based on The Allegations, Prison officials Never Provided Plaintiff with The Actual Reason for Putting Him Into Administrative segregation And Never Gave Plaintiff An opportunity To Contest The Administrative Segregation Designation. Additionally, Although Plaintiff's File states That He Had Administrative Segregation classification Review Hearings, Plaintiff was Never Present At Any of Them. This claim will Proceed Against Defendants Cox, Mohr, Churchward, McDaniel, Brooks, Baker, Willis, Oxborough, Huston, Martin Koehn, Carpenter, And Magnum. (Ecf No. 25, At Pg. 10 lns. 4-28 And Pg. 11, lns. 1-8, Case No. 3:16-cv-00497-MMD-VPC; Appendix E)".

In This Instant Case seeking Certiorari And As Previously stated Above, The Retaliation claims (Counts I And II) And The Due Process Administrative segregation claim (Count I) were Both Based on same Fabricated And Falsified evidence That was used And fraudulently concealed By Respondents. Until Petitioner made His
20.

Discovery of Facts And of The False Evidence Fraudulently Concealed on The Dates stated Below. The Magistrate Judge's Recognition of The same Known And used Fabricated And Falsified Evidence Under The Retaliation claims (Counts 1 And 12) And Failure To Recognize same Known Fabricated And Falsified Evidence used Under The Due Process Administrative Segregation claim (Count 1), where Both claims originated And were Both Based on And Relied on same Known Fabricated And Falsified Evidence used By Respondents. Creates A significant Conflict of Interest, was Highly Prejudicial, Bias And An Error By The lower Court That Requires This Court's Review.

Further, Petitioner Did Not Admit He Discovered The False Evidence on 11/14/2011 Admitted used And Fraudulently Concealed By Respondents To Place Petitioner into Solitary Confinement As Found By The Magistrate Judge, In The R And R, At Pg. 11, Ins. 6-12. The magistrate Judge Failed To point To The part of The Record where Petitioner Allegedly Admitted He Discovered The False Evidence Fraudulently Concealed on 11/14/2011. Because Petitioner Asserted In His Pleadings supported By Evidences That on 11/14/2011, Respondents made Their Admissions of Reason And Basis used To Place Petitioner into Indefinite HRP supermax status After Fraudulently Concealing The Reason And Basis For more Than Two Years Since The Placement. "while They were Continuing Their Fraudulent Concealment of The Facts surrounding The Reason And Basis Admitted on 11/14/2011, used To Designate Petitioner into Indefinite HRP supermax status During Their Admissions made on 11/14/2011." Knowingly Represented Their Reason And Basis Admitted used To The Court And Petitioner As Facts Until Petitioner later made His Discovery of Facts - which was That Respondents Admissions made on 11/14/2011 (In Their Pleading ECF No. 43, In Case No. 3:11-cv-00079-SCR-RAM) were Based on A Known Created, Introduced And used Fabricated And Falsified Evidence. See ECF No. 114, In Case No. 3:16-cv-00497-MMD-VPC, In Its Entirety supported By Authenticated Evidences For All Facts stated Therein And Above.

Petitioner made His First Discovery of Fact And Evidence On June 18, 2015 And It were on 02/18/2016, 04/12/2016 And 04/24/2016, Petitioner discovered Additional Evidence Definitively And Conclusively Demonstrating The Falsity of The Reason And Facts Represented To The Court And Petitioner on 11/14/2011, As Evidence Used To Remove Petitioner From GP And Placed Indefinite HAP supermax status (Solitary Confinement) Fraudulently Concealed By Respondents, which was Admitted Used To Place Petitioner Into Solitary Confinement That lasted For Six - Years - Ten - months - Eight - Days - Absent misconducts. See ECF No. 114, In Case No. 3:16-cv-00497-MMD-VPC, In Its Entirety supported By Authenticated evidences For All Facts stated Above And more.

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In Addition To The Continuing violation Based on The Duration of The False Imprisonment/Solitary Confinement That Exists In This Case As Demonstrated That was Continuing when Petitioner Filed His Complaint. And The Use of A Known False Evidence For The continued solitary confinement. There Also Exists In This Case The Fraudulent Concealment of Evidence As Demonstrated And stated Above supported By evidences In This Case (see ECF No. 114, Case No. 3:16-cv-00497). The Belated Discovery of evidences And Material Facts In This Case Necessary To Bring This Action In A Timely Fashion Fraudulently Concealed By Respondents, Provides For The Tolling of statute of limitations.

This Court Has Recognized And set Precedents For Belated Discovery of Action And Injury Due To Fraudulent Concealment. Moreso, In The state of Nevada statute of limitations Is Tolloed where Acts Causing Injury Are Fraudulently Concealed From The Injured Party or where Fraud Furnishing The Basis of An Action Is of Such Nature As To conceal Itself, A "statute of limitations Is Tolloed Until The Injured Party discovers, or with due diligence could Have Discovered, The Injury." Ashland oil Co. of Cal. V. Union oil Co. of Cal, 567 F.2 d 984, 988 (Temp. Emer. Ct. App. 1977), cert. Denied, 435 U.S. 994, 56 L.Ed. 22.

2d 83, 98 S. Ct. 1644 (1978); Western Mt. Oil, Inc. V. Gulf Oil Corp., 575 F. Supp. 813, 1983 U.S. Dist. Lexis 17837 (D. Nev. 1983).

The Ninth Circuit Court of Appeals has also recognized equitable estoppel also termed fraudulent concealment halts the statute of limitations when there is active conduct by respondents, above and beyond the wrong doing upon which the petitioner's claim is filed to prevent the petitioner from suing in time. The petitioner must demonstrate that he relied on the respondents' misconduct in failing to file in a timely manner and must plead with particularity the facts which give rise to the claim of fraudulent concealment. Guerrero V. Gates, 442 F.2d 697, At 707 (9th Cir. 2006); Prescott V. United States, 523 F. Supp. 918, 1981 U.S. Dist. Lexis 9840 (D. Nev. 1981) Aff'd, 731 F.2d 1388 (9th Cir. 1984).

In this instant case seeking certiorari, same such unlawful active conducts described in the immediate above paragraph in Guerrero V. Gates, supra. carried out by respondents in this case exist. Above and beyond the wrong doing in this case upon which the petitioner's claim is filed to prevent the petitioner from suing in time exist here in this instant case. see ECF No. 114, Case No. 3:16-cv-00497-MMD-VPC, in its entirety. see also ECF 1-2.

In determining when an action has accrued under a discovery based statute of limitations, "The question of when the alleged wrongdoing was or should have been discovered is a question of fact to be determined by the jury." It may be decided as a matter of law only when uncontroverted evidence irrefutably demonstrates plaintiff discovered or should have discovered the fraudulent conduct. Nevada Power Co. V. Monsanto Co., 995 F.2d At 1308 (9th Cir. 1992); Mosesian V. Post Marwick, Mitchell & Co., 727 F.2d 873 At 877 (9th Cir. 7, Cert. Denied, 469 U.S. 932, 83 L. Ed. 2d 265, 105 S. Ct. 329 (1984) (Internal citations and quotations omitted). where the cause of action was belatedly discovered, the issue whether the plaintiff exercised reasonable diligence is a question of fact. Timmel V. Moss, 803 F.2d 519 At 521 (9th Cir. 1986);

Sec V. seaboard Corp., 677 F.2d At 1309-10 (9th Cir. 1982) .

In This Instant Case seeking Certiorari, These Questions of law And violation exist Here In This Case. And The lower Court Decisions In this Case Conflict with These line of Ninth Circuit Precedents And this Court's Affirmation of Ninth circuit Court of Appeals. which Requires A Review By This Court To Answer The very Significant Important Questions of law Involved And As set Forth In This Case.

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Finally, Petitioner Respectfully Requests This Honorable Court To Consider Reviewing This Case And To Appoint Counsel In This Case To Assists Petitioner To sharpen The Significant Important claims And Questions of law Involved In This Case. And For Such Counsel To Be Considered And Appointed In This Case To Be Such out of state of Nevada who Does Not And will Not Pledge Allegiance To The state of Nevada Or Its Privies.

" Petitioner Prays That His Case Is Accepted For Review And Certiorari will Be Granted By this Honorable Court."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ENOMA IGBINOVIA

Date: July 01st, 2019 .