

No. 19-737

In the  
Supreme Court of the United States

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JAMES NATHANIEL DOUSE,  
*Petitioner,*

v.

UNITED STATES OF AMERICA, *et al.*,  
*Respondents.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

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**PETITION FOR REHEARING  
Pursuant to SC Rule 44**

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*Petitioner Pro Se*

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1.

## **PETITIONER 19-737 SEEKS REHEARING**

\*\*\*\*\* Curing The Plague of Injustice \*\*\*\*\*

Per The United States Constitution:

Amendment XIV

Section 1.

.....All persons born or naturalized in the United States....As I was an American Soldier of the United States Armed Forces....., and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state,..... nor The 11th Circuit Court of Appeals in the Great State of Georgia, shall make or enforce any law which shall abridge.....Restrict a Legal Right..... the privileges or immunities of citizens of the United States; nor shall any state deprive any person .....due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.....

After the North Carolina General Assembly found the Supreme Court's decision in Walburger to be "inconsistent with the General Assembly's intentions and the General Assembly's understanding of federal law" and that "it never intended the statute of repose in G.S. 1-52(16) to apply to claims for latent disease caused or contributed to by groundwater contamination, or to claims for any latent harm caused or contributed to by groundwater contamination."

"North Carolina's General Assembly acted swiftly to revise § 1-52(16) with regard to groundwater contamination claims after the Supreme Court's Walburger decision....."

"Hopefully someday, the State of North Carolina will likewise act swiftly to create a certified question mechanism, giving its own state courts a chance to influence the interpretation of the laws operating within its borders, rather than leaving it to the federal courts..... as to .....how North Carolina should operate."

As I have a Claim.....A Valid Claim.

Humility Comes Before Honor and Its not Good to deprive the innocent of Justice,  
So Says, The Word of God.

2.

**REASONS FOR REQUESTING REHEARING**

Additionally, At issue in this appeal is the straying away from the Statutory Text and scope of North Carolina General Statutes Section 1-52(16), which at the relevant time provided:

Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

North Carolina GS § 1-52(16) ....“This statute initially ‘fails to expressly, reference or to address any particular point of N.C. Mandatory Disability Directive .... N.C. Gen. Stat. § 1-17; § 1-19; § 1-20; § NCGS 35A-1101.....Which references my claim’ but after the amendment, ‘the amendment is more likely to be clarifying than altering.’” Ray,366 N.C. at 10, 727 S.E.2d at 682 (quoting Ferrell, 334 N.C. at 659, 435 S.E.2d

“To determine whether the amendment clarifies the prior law or alters it requires a careful comparison of the original and amended statutes.” Ferrell v. Dep’t of Transp., 334 N.C. 650, 659, 435 S.E.2d 309, 315 (1993).

See NCGS Mandatory Directive, where “it is logical to conclude that an amendment to an unambiguous statute indicates the intent to change the law.” Childers v. Parker’s, Inc., 274 N.C. 256, 260, 162 S.E.2d 481, 484 (1968).

Under North Carolina law, clarifying amendments apply retroactively, whereas altering amendments do not. See Ray v. N.C. Dep’t of Transp., 366 N.C. 1, 9, 727 S.E.2d 675, 681 (2012).

**A). My Petition 19-737 references my personal injuries within 3 weeks after...being at Camp Lejeune December 1976 and January 1977. I had no Injuries while at Camp Geiger November 1976**

See Appendix 1 BRIEF OF APPELANT JUNE 02, 2017 Circuit Court Case 16-17573 Pages 11 of 30 to 16 of 30 ..... App. 1

The NCGS Mandatory Directive does not allow barring my case...Pursuant to 11<sup>th</sup> Circuit October 14, 2014 ruling nor its May 22, 2020 Ruling.....as The North Carolina Supreme Court has also held that “[a] right or remedy, once barred by a statute of limitations, may not be revived by an Act of the General Assembly.” Waldrop v. Hodges, 230 N.C. 370, 373, 53 S.E.2d 263, 265 (1949), because doing so “takes away vested rights of defendants,” Wilkes Cnty. v. Forester, 204 N.C. 163, 170, 167 S.E. 691, 695 (1933).....

My claims fall within the meaning of “personal injury”

Again, Shortly after the Supreme Court decided Walburger, the Governor of North Carolina approved Session Law 2014-17, which amended the statute of repose. The General Assembly also passed, and the Governor signed, Session Law 2014-44, which made several technical amendments to Session Law 2014-17.6

.....The North Carolina Legislature expressly stated/revise/make clearer that.....  
The statute of repose to now reads:

Unless otherwise provided by law, for personal injury or physical damage to claimant’s property, the cause of action . . . shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Except as provided in G.S. 130A-26.3, no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

4.

N.C. Gen. Stat. Ann. § 1-52(16) (West 2014) (emphasis added). The session law added a new section to the North Carolina General Statutes, § 130A-26.3, which provides: “The 10-year period set forth in G.S. 1-52(16) shall not be construed to bar an action for personal injury, or property damages caused or contributed to by . . . the consumption, exposure, or use of water supplied from groundwater contaminated by a hazardous substance, pollutant, or contaminant.” N.C. Gen. Stat. Ann. § 130A-26.3.8.....BUT WHAT ABOUT N.C. Mandatory Disability Directive .... N.C. Gen. Stat. § 1-17; § 1-19; § 1-20; § NCGS 35A-1101.....Which references my claim’

**B). Also, my claims fall within the meaning of “latent diseases or supervenes diseases”**

N.C. Gen. Stat. § 1-52(16) (2010). On its face, the text of the statute contains no exception for latent diseases, The plain text of the statute is unambiguous. This case boils down to the meaning of the phrase “**personal injury**” in N.C. Gen. Stat. § 1-52(16). ....MEANING ...If the North Carolina Supreme Court would read this phrase to encompass disease claims, ....AND Read N.C.Gen. Stat. § 1-17; § 1-19; § 1-20; § NCGS 35A-1101 .....Petitioner's 19-737 claim proceeds.

Then, the 11th Circuit Court Appeal Ruling....October 14, 2014 and May 22, 2020 Ruling clearly strays from Statutory context. I believe that this Petition 19-737 should be Granted.....Even in CTS V Waldburger and Kent Stahle v. CTS Corporation..... Hyer V. Pittsburg Corning Corp Neither case include N.C.Gen. Stat. § 1-17; § 1-19; § 1-20; § NCGS 35A-1101

## 5.

As The time limitation in McCrater, North Carolina's statute of repose is a substantive limit on a plaintiff's right to file an action. See *Boudreau v. Baughman*, 322 N.C. 331, 340, 368 S.E.2d 849, 857 (1988) ("Ordinary statutes of limitation are clearly procedural, affecting only the remedy directly and not the right to recover.

The statute of repose, on the other hand, acts as a condition precedent to the action itself." (citations omitted)). As a result, the repose limitation "is an inseparable part of the plaintiff's substantive right of action."

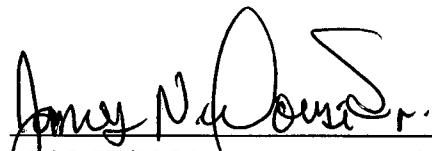
See *McCrater v. Stone & Webster Engineering Corp.*, 248 N.C. 707, 104 S.E.2d 858 (1958), These are Facts sufficient to justify the Right to Sue.

6.

CONCLUSION

**In determining whether disease claims fall within the meaning of “personal injury,” see...The decision in Hyer v. Pittsburgh Corning Corp., which states, “the [North Carolina] Supreme Court does not consider disease to be included within a statute of repose directed at personal injury claims unless the Legislature expressly expands the language to include it.” 790 F.2d 30, 33-34 (4th Cir. 1986) (emphasis supplied) (internal quotation marks omitted).**

Respectfully submitted,  
June 24, 2020

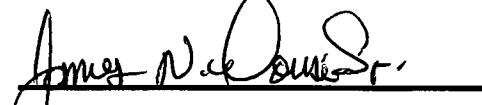
  
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## CERTIFICATE OF COUNSEL

I, Petitioner 19-737, James Nathaniel Douse, hereby certify that to the best of my knowledge and belief that the circumstances..... for petition for rehearing is presented in good faith and not for delay.

I further Certify that Petition, Appendix, Circuit Court Briefs, District Court Motions and Responses and the Above Statements for Rehearing are Factual True and Correct.

June 24, 2020



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## **APPENDIX**

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**Appendix 1**

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**APPENDIX 1**

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No. 16-17573-G

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

**JAMES NATHANIEL DOUSE,  
Plaintiffs-Appellant**

**v.**

**UNITED STATES OF AMERICA,  
Defendant- Appellees**

---

**ON APPEAL FROM THE UNITED STATES DISTRICTS COURT  
FOR THE NOTHERN DISTRICT OF GEORGIA**

---

**BRIEF FOR APPELLANT**

---

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James Nathaniel Douse Vs. Department of The Navy, United States of America,

No. 16-17573-G

**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to 11th Cir. Rule 26.1, Pro Se Plaintiff-Appellant certify that all persons who have an interest in the outcome of this appeal were identified in my opening brief.

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 16-17573-G

JAMES NATHANIEL DOUSE,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA,

DEPARTMENT OF THE NAVY,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

(I).

**INTRODUCTION AND FACTUAL BACKGROUND's**

**Statement of Issues: Reason(s) for This Appeal**

At the time the Plaintiff-Appellant brought this action, May 22, 2012, the statute of repose provided: "N.C. Gen. Stat. § 1-52(16) (2010). Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action . . . shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action."

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As a Minor, Plaintiff-Appellant was disabled in year 1976 from consuming Toxic Water while at Camp Lejeune Marine Base. "North Carolina Disability § 1-17, Bryant v. Adams, 116 N.C. App. 448, 457 (N.C. Ct. App. 1994) states clearly that Chapter 99B "shall not be construed to amend or repeal" G.S. § 1-17. Defendants' interpretation that tolling of the statute of repose under G.S. § 1-17 cannot occur would result in amending G.S. § 1-17 to provide that a person entitled to commence an action who is, at the time the cause of action accrued, under one of the listed disabilities may bring an action within three years after the removal of the disability unless the statute of repose operates to bar that action. Such an interpretation would directly contravene the intent of our legislature." I later found that the 1976 legislative intent to the contrary as expressed in section 6 which explicitly provides that the tolling provision for disabilities will apply under the Products Liability Act." Bryant v. Adams, 116 N.C. App. 448, 457-58 (N.C. Ct. App. 1994). The 1976 North Carolina Appeals Court rejected the analysis employed by the Defense because the express intent of the legislature is to provide minors and others with disabilities a longer time in which to file suit for injuries caused by a defective product. Thus, the operation of the products liability statute of repose may be tolled under G.S. § 1-17 for a plaintiff's disability. Contrary on the part of the Defense-Appellee's false representation and concealment of material facts and the clear intention of such international Punitive conduct. December 5, 2016, The Trial Court abuse its discretion and authority and issued a very unfair and Partial Ruling. The District Court made error multiple times as well. This case and material is tooooooo complex and too important for one person/judge to decide.

**Plaintiff-Appellant objections and the Relief sought listed below:**

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Objections

(A). Denying Plaintiff-Appellant Motion for Reconsideration for Property Damage. , Plaintiff-Appellant Objects because Motion is warranted

(B). Government's last act or omission N.C. Gen. Stat. § 1-52(16) never established

(C). North Carolina Disability § 1-17 never Discussed nor Disclosed;

(D). District Court Dismissed in error District Number 1:16-CV-03704-TWT, Appeals Number 17-10393-A Where a government employee violated Plaintiff-Appellant 4th Amendment Rights...which are protected Rights and Attorney General of United States Never Certified that employee was in the scope of his employment, Defendant violated Federal and State Laws, Standing-Order 04-02.

(E). District Court Dismissed in error case 1:16-CV-04195-TWT, Appeals Number 17-10390-G where Assistant U.S Attorney Darcy F. Coty illegally remove State of Georgia Fulton County case number 16EV004542, Pursuant to 28 U.S. Code § 1446 - Procedure for removal of civil actions, from Fulton State Court to Federal District Court Number 1:16-CV-04195-TWT.

(F). GRANTS the Government's motion for protective order, Not warranted.

(G). Eleventh Circuit, Motion to GRANT Plaintiff Douse's pro se motion for a protective order ...When it's the Government Employee that Violated my 4<sup>th</sup> Amendment Rights, by Without consent Disclosing and Dissimilating my full SSN, full DOB, full Address and full phone; This is a HIPAA/HITECH Violation and Violation of Social Security Administration Rules and Law.

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Within 30 days those errors are to be corrected.....they were not. Additionally, Standing Order 04-02 by District Judge Orla warns "counsels to Redact, or else Sanctions and Default Judgement" in Favor of the Plaintiff-Appellant can be allowed. The Defense-Appellee is in Clear Violation of HIPAA and Georgia State Laws and Social Security Administration law and others Law; Violation of Pre-Trial Instruction, and Federal Rules.....Here Again District Court erred Stating "it found no Wrong". The District Court clearly erred and again demonstrated a clear Abuse of its authority. These are the Facts, I believe in the Rule of Law and The Rule of Law should prevail. The Office of Professional Responsibility, Office of Judicial Counsel, and DOJ Office of Inspector General Prohibit and such actions.

**(H).** The Attorney General of the United States NEVER Certified that Government Employee to be operating within the scope of his employment. I formally Challenged the certification, but ignored.

**(I).** DENIES Plaintiff Douse's pro se motion for punitive and exemplary damages which I am entitled to under Georgia State Law.

**(J).** "On October 14, 2014, the Eleventh Circuit, reviewed the application of the revised statute in Bryant v. United States, Case No. 12-15424, and agreed that the Legislative amendment substantially amended the law....

**"The Eleventh Circuit was obliged to make an educated "guess" as to the application of North Carolina law because there are no procedures in place by which a question can be certified to the North Carolina Supreme Court. " Per The Eleventh Circuit, cases was Remanded to lower court.**

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And yet again, Plaintiffs-Appellant argued that its' claims were of the type the

Legislature intended to allow. The District court agreed and subsequently

dismissed "all" Plaintiff's claims. However, Under North Carolina Law:

§1-17. Disabilities; § 1-19. Cumulative Disabilities; § 1-20. Disability must exist when right of action accrues. As a Minor, I was 19 years old September 1976, October 1976, November 1976 and December 1976, personally stationed at and formally discharged from United States Marine Corps Base, Camp Lejeune North Carolina. My current disabilities as of September, October, November and December 1976 are the same now and are not Removed.....as of today, June 2017. There is no quare for my Disabilities/Injuries.

(K) This Plaintiffs-Appellant has never been represented my Court Plaintiff Lasion Counsel, therefore, The Eveleth Circuit October 14, 2014 holding of Plaintiff Bryant's issues and concerns did not relate to this Plaintiffs-Appellant, Pro Se complaint then nor now. Additionally, Plaintiff Bryant's United States Supreme Court Writ of Certiorari Does not apply to this Plaintiff-Appellant.

(L). Plaintiff-Appellant do not deny that the operative effect of the statute of repose which is to foreclose suit against Defendant-Appellee Six years or Ten years .....However, This Plaintiff-Appellant contend that District Court errored, thus Under North Carolina Law for Minors with Disabilities G.S. § 1-17 effects a grace period in which the statute of repose can be tolled.

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*G.S. § 1-17, entitled Disabilities, provides....See North Carolina Court of Appeals 116 N.C. App. 448 (N.C. Ct. App. 1994) BRYANT V. ADAMS*

**\*Defendants argue that it would be impossible to conclude that the language concerning G.S. § 1-17 was intended to control over the provisions of G.S. § 1-50(6) because if the legislature had so intended, such intent could have been stated expressly as "the provisions of G.S. § 1-50(6) shall be governed by the tolling provisions of G.S. § 1-17." ...That Argument was Rejected..... The application language of the Act states clearly that Chapter 99B "shall not be construed to amend or repeal" G.S. § 1-17.**

(II).

**This Appeal should be Allowed because Some Reversible errors have been committed, And for all the reasons stated above.**

This Appeal based on:

\*Intent of Tolling provision Exist for N.C. Statue of Repose according to

North Carolina's G.S. § 1-17, entitled Disabilities ;

The Government's :

\*Post-Discharge Failure to warn.

\*A New Duty To Warn

\*Failure to warn of In-Service Active Duty Hazardous Substances Exposures.

\*Failure to warn of In-Service Active Duty Consumption of Toxic Exposures.

\*Intentional Infliction Of Emotional Distress

*"All parties have a right to ask for judicial review of a judgment rendered by a judge and/or jury at the trial level. However, mere dissatisfaction with the outcome is not a basis for appeal—"*

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### The Statutes at Issue and Timelines

\* North Carolina Disability § 1-17; § 1-19; § 1-20 Approx Enactment 1976.....

\* As a minor, Plaintiff-Appellant was Disabled/Injured at 19 year as of December 1976 by Camp Lejeune Toxic Water.

\* After the Fact, After my Disability - North Carolina Statute of Repose Enactment year 1979.

\* CERCLA Enactment 1980 rev 1986 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)

(III).

### Intent of Tolling provision Exist for N.C. Statue of Repose

The Recent 2014 Intent of the North Carolina General Assembly Perhaps, went a tad bit too far.....with its clarification....."Session Law 2014-44 clarifies, Session Law 2014-17 is titled "An Act Clarifying that Certain Civil Actions Relating to Groundwater Contamination Are Not Subject to the Ten-Year Statute of Repose Set Forth in G.S. 1-52," \*Nevertheless, The Title of a law provides some evidence of legislative intent. The clear and explicit intent of the North Carolina legislature, as evidenced by the statutory language of the Products Liability Act itself, is to allow the statute of repose to be tolled if G.S. § 1-17 applies." For minors in 1976, \*The statute of repose for a products liability action as found in G.S. § 1-50(6) provides: "No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the

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date of initial purchase for use or consumption." Statutes of repose operate differently than statutes of limitations. "The term 'statute of repose' is used to distinguish ordinary statutes of limitation from those that begin to run at a time unrelated to the traditional accrual of the cause of action." *Boudreau v. Baughman*, 322 N.C. 331, 339-40, 368 S.E.2d 849, 856 (1988). In North Carolina, the statute of limitations begins to run against an infant, minor, or an insane person who is represented by a guardian at the time the cause of action accrues. If he has no guardian at that time, then the statute begins to run upon the appointment of a guardian or upon the removal of his disability as provided by G.S. § 1-17, whichever shall occur first. *Bryant v. Adams*, 116 N.C. App. 448, 459 (N.C. Ct. App. 1994). Equitable estoppel may also defeat a defendant's statute of repose defense. *One North McDowell Assn. v. McDowell Development*, 98 N.C. App. 125, 389 S.E.2d 834, disc. review denied, 327 N.C. 432, 395 S.E.2d 686 (1990)."

\*\*"A statute of repose "serves as an unyielding and absolute barrier that prevents a plaintiff's right of action even before his cause of action may accrue," *Black v. Littlejohn*, 312 N.C. 626, 633, 325 S.E.2d 469, 475 (1985), and functions to give a defendant a vested right not to be sued if the plaintiff fails to file within the prescribed period. *Colony Hill Condominium I Assoc. v. Colony Co.*, 70 N.C. App. 390, 320 S.E.2d 273 (1984), disc. review denied, 312 N.C. 796, 325 S.E.2d 485 (1985). 2G.S. § 1-50(6) is intended to be a substantive definition of rights which sets a fixed limit after the time of the product's manufacture beyond which the seller will not be held liable. See *Bolick v. American Barmag Corp.*, 306 N.C. 364, 293 S.E.2d 415 (1982). Whether a statute of repose has expired is strictly a legal issue. *Lamb v. Wedgewood South Corp.*, 308 N.C. 419, 302 S.E.2d 868 (1983)."

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Again, Plaintiff-Appellant do not deny that the operative effect of the statute of repose in this case is to foreclose suit against Defendant-Appellee Six years or Ten years .....However, Plaintiff-Appellant contend that Under North Carolina Law for Minors G.S. § 1-17 effects a grace period in which the statute of repose can be tolled. G.S. § 1-17, entitled Disabilities, provides, in pertinent part:

(a) A person entitled to commence an action who is at the time the cause of action accrued either

(1) Within the age of 18 years; Plus 3 years statutes of limitations = 21 years old.

In 1976, I was a Minor at the time of my Disabilities/Injury happened from unknowingly consuming Camp Lejeune Toxic Water and Disabilities still remain.

(3) . . . may bring his action within the time herein limited, after the disability is removed, . . . within three years after the removal of the disability, and at no time thereafter.

(Emphasis added.) G.S. § 1-17 provides for the tolling of most limitations periods during a person's minority. Where a guardian ad litem is appointed for a minor, the limitation period begins to run from the time of the appointment. Jefferys v. Tolin, 90 N.C. App. 233, 368 S.E.2d 201 (1988).

While these two statutory provisions are seemingly in conflict, the 1979 Sess. Laws ch. 654, entitled "An Act Relating to Civil Actions for Damages for Personal Injury, Death or Damage to Property Resulting From the Use of Products," (the Act) provides a clear answer.

The Act enacted as law both Chapter 99B, governing products liability suits, and G.S. § 1-50(6), the statute of repose applicable to Chapter 99B. Section 6, which is application language governing the effect and scope of the Act, states that "[t]he provisions of this act shall not be construed to amend or repeal the provisions of G.S. 1-17." 1979 Sess. Laws ch. 654 Sec. 6. (Emphasis added.)

\*In construing a statute, First ascertain the legislative intent to ensure that the purpose and intent of the legislation are satisfied, whether in 1976 or 2014.

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In making this determination, look at the language of the statute itself. If the language used is clear and unambiguous, this Court must not engage in judicial construction but must apply the statute to give effect to the plain and definite meaning of the language. Fowler v. Valencourt, 334 N.C. 345, 435 S.E.2d 530 (1993). "A fundamental rule of statutory construction is that when the legislature has erected within the statute itself a guide to its interpretation, that guide must be considered by the courts in the construction of other provisions of the act which, in themselves, are not clear and explicit." Williams v. Williams, 299 N.C. 174, 180, 261 S.E.2d 849, 854 (1980). On its face, the Act instructs us, in Section 6, that G.S. § 1-17 may operate to toll the statute of repose provision.

(IV).

North Carolina Court of Appeals 116 N.C. App. 448 (N.C. Ct. App. 1994)

BRYANT Vs. ADAMS

Infants (18th birthday + 3 years maximum = 21 years old), incompetents, or insane persons granted normal SOL upon removal of disability, except in malpractice where if infant, maximum is age 19.

\*\*"Disability - Refers to some condition (infancy, insanity, incompetence) which the law recognizes as a basis for allowing a statute of limitations to be tolled or extended to some degree. In all jurisdictions, the disability must exist at the time the cause of action accrues in order for the injured party to be given the benefit of any tolling provision." My Personal Identifiable Information is not show nor dissimilated without my Expressed Consent.

Again, at 19 years old my Disabilities was November 1976 thru Post Discharge

until Today's Date are: Liver Damage (Fatty Liver Disease (Hepatic Steatosis):

Non-alcoholic fatty liver disease); Focal Seizures/Complex Partial Seizures,

Migraine Headaches, Auto Immune Damage, Extremely Sensitive to

Room Lights, Sensitive Car head-lights, Neuro-behavioral effects Damages and

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Autoimmune disease, Genetic Damage where my immune system attacks healthy cells in my body by mistake, and possibly affecting my children.....

Defendants further argue that the more specific statute of repose in a products liability action controls over the more general tolling provision for persons under disability. Defendants cite to rules of statutory construction which state "that where one statute deals with certain subject matter in particular terms and another deals with the same subject matter in more general terms, the particular statute will be viewed as controlling in the particular circumstances absent clear legislative intent to the contrary." State Ex Rel. Utilities Comm. v. Thornburg, 84 N.C. App. 482, 353 S.E.2d 413, disc. review denied, 320 N.C. 517, 358 S.E.2d 533 (1987). (Citation omitted.) We reject defendants' argument because we find legislative intent to the contrary as expressed in section 6 which explicitly provides that the tolling provision for disabilities will apply under the Products Liability Act.

Defendants also argue that tolling the products liability statute of repose for disabilities negates the entire purpose of the statute of repose. If the legislative intent is to place a greater value upon the right of a person under certain disabilities to have an extended time in which to bring suit than upon the right of a manufacturer to be free from suit after Six years or Ten years, the courts must defer to that intent. **As the Supreme Court recognized in Tetteron v. Long Manufacturing Co., 314 N.C. 44, 332 S.E.2d 67 (1985), if the legislature chooses to make economic policy determination into law then that intention should be respected by the courts.**

Moreover, G.S. § 1-17 does not completely eviscerate the statute of repose in the case of minors and others under disability. If a product is over Six years old at the time of injury, which would be the time that the claim accrues, then the statute of repose operates as a total bar on that claim. However, if a claim accrues before the Six year statute of repose has expired, G.S. § 1-17 simply operates to extend the time period within which a minor or other with disability may bring suit under Chapter 99B. Therefore, claims accruing after Six years or Ten years will still be time barred only in certain instances."

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Finally, defendants argue that the statute of repose cannot be tolled under G.S. § 1-17 because once a limitations period has begun to run, then no subsequent disability may toll the running of the limitations period. Defendants rely on the case of *Davis v. E.I. DuPont DeNemours Co., Inc.*, 400 F. Supp. 1347 (W.D.N.C. 1974), for the proposition that "once a period of limitations begins to run nothing stops it, and that . . . the subsequent accession of a minor to a right of action cannot toll its running." *Davis* was not decided under G.S. § 1-50(6), but rather under an earlier statute, G.S. § 1-52(5), which set the limitations period for an action to recover damages caused by a defective product at three years. We reject the analysis employed by the *Davis* court as inapplicable to G.S. § 1-50(6) because the express intent of the legislature is to provide minors and others with disabilities a longer time in which to file suit for injuries caused by a defective product.

(V).

The North Carolina Supreme Court

\* Per my 110 year old Grandmother she says "Violation of my Constitutional Rights is not Frivolous for colored folks" Unquote:

The North Carolina Supreme Court has also held that "[a] right or remedy, once barred by a statute of limitations, may not be revived by an Act of the General Assembly," *Waldrop v. Hodges*, 230 N.C. 370, 373, 53 S.E.2d 263, 265 (1949), because doing so "takes away vested rights of Defendants or Plaintiff," *Wilkes Cnty. v. Forester*, 204 N.C. 163, 170, 167 S.E. 691, 695 (1933).

My case is not Barred.

North Carolina Statute:

§ 1-17. Disabilities.

(a) A person entitled to commence an action who is under a disability at the time the cause of action accrued may bring his or her action within the time limited in this Subchapter, after the disability is removed, .....My Disabilities are permanent ...never removed.

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**§ 1-19. Cumulative disabilities.**

**When two or more disabilities coexist at the time the right of action accrues(becomes enforceable), or when one disability supervenes an existing one, the limitation does not attach until they all are removed. (C.C.P., ss. 28, 49; Code, ss. 149, 170; Rev., s. 364; C.S., s. 409.)**

**§ 1-20. Disability must exist when right of action accrues.**

**No person may avail himself of a disability except as authorized in G.S. 1-19, unless it existed when his right of action accrued. (C.C.P., s. 48; Code, s. 169; Rev., s. 365; C.S., s. 410.)**

**(VI).**

**Failure to Warn:**

A). My continuous allegation has been that the Government had a duty to warn this Plaintiff-Appellant after I was discharged from service, November 1976. I still lived there on Base as a Private Citizen Camp Lejeune Marine Base, N. C. My Disabilities/Injuries was pretty sever in December 1976 to January 1977 and the (N.C. Statue of Repose was NOT enacted until 1979). Recovery should be allowed, because of the "separate" or "independent" negligent act occurring "entirely after discharge, age 19.

" See "Brown v. United States, 348 U.S. 110, 75 S. Ct. 141, 99 L. Ed. 139 (1954), for negligent acts occurring after military personnel leave the service. See Monaco v. United States, 661 F.2d 129, 132 (9th Cir. 1981)."

See "Everett v. United States, 492 F. Supp. 318, 325-26 (S.D. Ohio 1980) (failure to warn an independent negligent act); "

Thornwell v. United States, 471 F. Supp. 344 (D.D.C. 1979) ; Schwartz v. United States, 230 F. Supp. 536 (E.D. Pa. 1964) (allowing recovery for failure to warn, where dangerous Toxin and or Drugs in Drinking Water was administered during service not discovered till post-service).

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Thornwell v. United States, 471 F. Supp. 344 (D.D.C. 1979) (finding independent tort and granting recovery where Government deliberately refused to give claimant information on Toxin ingested in him in-service); Schwartz v. United States, 230 F. Supp. 536 (E.D. Pa. 1964) (allowing recovery for failure to warn, where dangerous effects of Toxins or drug administered during service not discovered till post-service).

**B).** Based on the statue N.C. Gen. Stat. § 1-52(16) (2010) as it existed when this Appellant brought his case on May 22, 2012.

December 5, 2016, See Exhibit-1. The statutory language was unambiguous. A "separate" or "independent" negligent act occurring "entirely after my discharge" which is also a continuous Intentional Infliction of Emotional Distress coupled with and including a continuous Post Discharge Failure to Warn all of which are not barred. Pursuant to 28 U.S.C. § 2679 (Intentional Infliction of Emotional Distress). The Government was intelligently Informed enough to know that my injuries would be immediate starting in January 1977. There was a continuous aggravation of those injuries ranging from Focal Seizures to Excessive Constant Headaches to Migraine Headaches and Liver Damage all of which was an immediate Neurological Effects from consuming the Drug Toxic Water Again, my Disability/Injury was not latent. The Government denied any wrong doing while actively hiding this Poisonous "Hidden Hazardous" for 10 long years until the North Carolina Statue of Repose had expired, Approx. 1989. After my discharged in November 1976 from active duty and Before the 1979

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Enactment of N.C. Gen. Stat. § 1-52(16) Statute of Repose, the Government's knowledge of the dangers of Toxic Substances in the Drinking Water "expanded" to the point where a "new duty to warn" was triggered.

The Feres Doctrine.....Does not Apply to me....

*Again, The Government was negligent in failing to warn my decedent of the harmful effects of the Drugs and Toxin in the Drinking water where with I was exposed. A Failure to Warn Prior to my coming to Camp Lejeune and a Failure to Warn After leaving Camp Lejeune all of which aggravated my injuries and the Negligent Act in failing to monitor and treat my injuries after I left the service, which is a "separate" or "independent" negligent act occurring "entirely after discharge.*

The Government has also sought to dismiss the plaintiff-Appellant complaint on the grounds that my claim is barred by the Feres doctrine and that any post-discharge failure-to-warn claims are barred by the discretionary-function exception to the Federal Tort Claims Act. The span of time that covers my specific Toxic exposure was Approx. August 1976 to January 1977, which was well within the Documented time period for Camp Lejeune Toxic Exposure, according to court document, and that the Government knew during that time period that there was various Drugs and Toxic substances within the drinking waters at Camp Lejeune Marine Base, North Carolina., Hence The 1979 enactment

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of North Carolina Statute of Repose.

In Broudy v. United States, 722 F.2d 566 (9th Cir. 1983) (Broudy II), the Court of Appeals for the Ninth Circuit considered an issue markedly similar to the one here. Like this case, Broudy involved in-service exposure to radiation. The court vacated the district court's dismissal of the plaintiff's action alleging that the government's negligent failure to warn occurred after the injured serviceman was discharged, because the government only obtained knowledge of the hazards of radiation after that date. Id. at 569-70; see also Gaspard, 713 F.2d at 1101.....

"(In barring the plaintiff's claim the court noted that "[t]here is no allegation before us that knowledge increased to a point where a new duty to treat or warn was created."); Broudy v. United States, 661 F.2d 125, 128-29 (9th Cir. 1981) (Broudy I). Moreover, several district courts confronted with allegations of post-discharge failures to warn have indicated that Feres does not apply. See Seveney v. United

States, 550 F. Supp. 653 (D.R.I. 1982); Everett v. United States, 492 F. Supp. 318 (S.D.Ohio 1980); Thornwell v. United States, 471 F. Supp. 344 (D.D.C. 1979)."

"Our review of the law in this area suggests that in a case alleging a failure by the government to warn of in-service active-duty exposure to hazardous substances, the crucial inquiry is whether the purported conduct of the government giving rise

to the plaintiff's cause of action occurred while the injured party was still a member of the armed forces. See, e.g., Heilman, 731 F.2d at 1107; Broudy II, 722 F.2d at 570; Gaspard, 713 F.2d at 1101; Lombard, 690 F.2d at 220; Stanley, 639 F.2d at 1154.

Under this standard, the claim in the plaintiffs' proposed amendment would not be barred by the Feres doctrine nor the Discretionary Function Exception and this case is within this Court's Jurisdiction.

The relevant "injury" here is the aggravation or perpetuation of Cole's radiation-induced condition due to the government's failure to discharge its new duty to warn. It is urged that the conduct by the United States causing this injury occurred

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entirely after he left the service.".....which would not be Barred by " N.C. Gen. Stat. § 1-52(16) (2010).

(VII).

**Relief sought:**

\*Of course, Plaintiffs-Appellant Prays and is seeking compensation for Disabilities/Injury since 1976 and Property Damages, Punitive Damages.... Eleventh Circuit is requested to allow District Case 1:11-md-02218-TWT to proceed to Trial, Taking this case out of one Judges' hand where Reconsideration to Include Post-Discharge Failure, A new Duty to warn....and Property Damage should be allowed and to further determined **A).** What are the Facts. **B).** What is the Law. **C).** What is the Right Thing to do.... where Partiality, Favoritism and Uneven Standards should not be Allowed...

\*District Court Dismissed in error case 1:16-CV-04195-TWT, Plaintiff-Appellant is Requesting Eleventh Circuit Appeals Court to allow 17-10390-G case to be Reopen and Remand to State Court a Jury Trial is Demanded.

\* Plaintiff-Appellant is Requesting Eleventh Circuit Appeals Court to GRANT Plaintiff Douse's pro se motion for a Protective Order for Illegal search and seizure...Documented proof show it's the Government Employee that Violated my

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4th Amendment Rights, by Without consent Disclosing and Dissimilating my full SSN, full DOB, full Address and full phone;

\*District Court Dismissed in error District case 1:16-CV-03704-TWT, Eleventh Circuit Appeals Clerk Dismissed 17-10393-A ...again, Dismissed in error even though District Court Granted permission to proceed in IFP for case 1:11-md-02218-TWT therefore no further authorization was needed according to FEDERAL RULES OF APPELLATE PROCEDURE Rule 24. Proceeding in

Forma Pauperis; Plaintiffs-Appellant seeking case to be Reopen and continue on Appeal.

\* Plaintiff-Appellant Prays for punitive Under Georgia State Law. Statue: O.C.G.A. 51-12-5.1 (2010) 51-12-5 .1. "Punitive damages (b)Punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct..."

\* Plaintiff-Appellant is Motioning for additional award for damages, Amended claim per *The Government was negligent in failing to warn my decedent of the harmful effects of the Drugs and Toxin in the Drinking water where with I was exposed. A Failure to Warn Prior to my coming to Camp Lejeune and a Failure to Warn After leaving Camp Lejeune all of which aggravated my injuries and the Negligent Act in failing to monitor and treat my injuries after I left the service, which is a "separate" or "independent" negligent act occurring entirely after discharge.*

\*Plaintiff Douse's pro se motion for relief \* Proper Resolution for Violation of my

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4<sup>th</sup> Amendment Constitutional Rights as in "Bivens" is not common place.

\*Plaintiff-Appellant Douse is Appealing and motioning to amend for Compensation for Genetic Damage and The Government Failure to Warn, Monitor and Treat me After leaving service including Failure to Warn of Genetic Damage to my children born after my Toxic exposure. All of which in my view indicate that Post Discharge Failure to Warn.... only aggravated my Disabilities/Injuries after leaving service.

Brown v. United States, 348 U.S. 110, 75 S.Ct. 141, 99 L.E.d. 139 (1954), for negligent acts occurring after military personnel leave the service. See Monaco v. United States, 661 F.2d 129, 132 (9th Cir. 1981)." The "separate" or "independent" negligent act occurring "entirely after discharge in 1976 created a Failure to Warn Prior to my coming to Camp Lejeune, Failure to Warn After leaving Camp Lejeune. Intentional Infliction Of Emotional Distress and Post-Discharge Failure To Warn.

\*Plaintiff Motion for Punitive Damages According to Georgia State Statute: O.C.G.A. 51-12-5.1 (2010) 51-12-5 .1. Punitive damages (b )Punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.

The District Court has impose such an astronomically HIGHER hurdle of proof ....as well an excessive number of those HIGHER hurdles for Plaintiffs.

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(VIII).

**Conclusion**

In Conclusion,

Remember his marvelous works that he hath done, his wonders, and the judgments of his mouth;

O ye seed of Israel his servant, ye children of Jacob, his chosen ones.

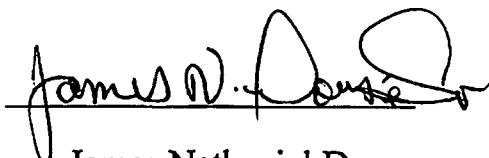
He is the Lord our God; his judgments are in all the earth.

Be ye mindful always of his covenant; the word which he commanded to a thousand generations;

He suffered no man to do them wrong: yea, he reproved kings for their sakes,

Saying, Touch not mine anointed, and do my prophets no harm.

Respectfully,



James Nathaniel Douse  
678-544-8157  
3535 Peachtree Rd N.E.  
Bldg 520 Unit 508  
Atlanta, Georgia 30326  
( Pro Se Plaintiff )

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**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE  
PROCEDURE 32(A)(7)**

I certify that this Brief complies with the type-volume limitation of  
Fed. R. App. P. 32(a)(7)(B). This Brief contains approx. 13,000 words.

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**CERTIFICATE OF SERVICE**

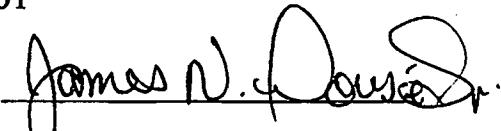
I hereby certify that on June 2, 2017, I cause the foregoing to be served to the Parties below via United States Postal Certified Mail at their mailing addresses:

J. Patrick Glynn  
Environmental Torts Section  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Stuart F. Delery  
Acting Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0009

Daniel Tenny  
Attorneys, Appellate Staff  
Civil Division, Room 7215  
Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

Respectfully,



James Nathaniel Douse  
678-544-8157  
3535 Peachtree Rd N.E.  
Bldg 520 Unit 508  
Atlanta, Georgia 30326  
( Pro Se Plaintiff )

# Exhibit 1.

1. LAST NAME - FIRST NAME - MIDDLE NAME <b>BOUSE, James Nathaniel</b>			2. SEX <b>M</b>	3. SOCIAL SECURITY <b>0552</b>		4. DATE OF BIRTH <b>56</b>	YEAR <b>12</b>	MONTH <b>10</b>	DAY <b>02</b>	
5. DEPARTMENT, COMPONENT AND BRANCH OR CLASS <b>USMC-11</b>			6a. GRADE, RATE OR RANK <b>Corporal</b>			b. PAY GRADE <b>E-4</b>	7. DATE OF RANK <b>75</b>	YEAR <b>10</b>	MONTH <b>02</b>	
8a. SELECTIVE SERVICE NUMBER <b>Unknown</b>		b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, STATE AND ZIP CODE <b>Unknown</b>				c. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, State and ZIP Code) <b>Broward, FL 33060</b>				
9a. TYPE OF SEPARATION <b>Release from active duty</b>			b. STATION OR INSTALLATION AT WHICH EFFECTED <b>CoL 3rdBn, 8thMar, 2ndMarDiv(Rein), FMF</b>				d. EFFECTIVE DATE <b>76</b>	YEAR <b>11</b>	MONTH <b>10</b>	
c. AUTHORITY AND REASON <b>MRV 3</b>			e. TYPE OF CERTIFICATE ISSUED <b>None</b>				f. 10. REENLISTMENT CODE <b>RE-1A</b>			
11. LAST DUTY ASSIGNMENT AND MAJOR COMMAND <b>CoL 3rdBn, 8thMar, 2ndMarDiv(Rein), FMF, CamLej</b>			12. COMMAND TO WHICH TRANSFERRED <b>MCRFAA</b>				13. TERMINAL DATE OF RESERVE/ MSS OBLIGATION <b>YEAR 76 MONTH 11 DAY 12</b>			
14. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City, State and ZIP Code) <b>Jacksonville, FL</b>							15. DATE ENTERED ACTIVE DUTY THIS PERIOD <b>YEAR 74 MONTH 11 DAY 12</b>			
16a. PRIMARY SPECIALTY NUMBER AND TITLE <b>Rifleman 0311</b>			b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER <b>Proof director Small arms 199:168</b>		18. RECORD OF SERVICE			YEARS <b>01</b>	MONTHS <b>11</b>	DAYS <b>29</b>
17a. SECONDARY SPECIALTY NUMBER AND TITLE <b>None</b>			b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER <b>Not Applicable</b>		(a) NET ACTIVE SERVICE THIS PERIOD <b>00</b>			<b>00</b>	<b>00</b>	<b>00</b>
					(b) PRIOR ACTIVE SERVICE <b>00</b>			<b>00</b>	<b>00</b>	<b>00</b>
					(c) TOTAL ACTIVE SERVICE (a + b) <b>01</b>			<b>11</b>	<b>29</b>	
					(d) PRIOR INACTIVE SERVICE <b>00</b>			<b>00</b>	<b>00</b>	
					(e) TOTAL SERVICE FOR PAY (c + d) <b>01</b>			<b>11</b>	<b>29</b>	
					(f) FOREIGN AND/OR SEA SERVICE THIS PERIOD <b>01</b>			<b>03</b>	<b>07</b>	
19. INDOCHINA OR KOREA SERVICE SINCE AUGUST 5, 1964 <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			20. HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED (In Years) <b>SECONDARY/HIGH SCHOOL 12 yrs (1-12 grades) COLLEGE 00 yrs</b>							
21. TIME LOST (Preceding Two Yrs) <b>None</b>		22. DAYS ACCRUED LEAVE PAID <b>11.0</b>		23. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE <input type="checkbox"/> \$15,000 <input type="checkbox"/> \$5,000 <b>X\$20,000</b> <input type="checkbox"/> \$10,000 <input type="checkbox"/> NONE		24. DISABILITY SEVERANCE PAY <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES		25. PERSONNEL SECURITY INVESTIGATION <b>a. TYPE b. DATE COMPLETED</b>		
						AMOUNT <b>N/A</b>		<b>ENTNAC 740708</b>		
26. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED <b>Rifle Expert Badge</b>										
27. REMARKS <b>Good Conduct Medal peried commences 741112</b>										
28. MAILING ADDRESS AFTER SEPARATION (Street, RFD, City, County, State, ZIP) <b>See item 30</b>					29. SIGNATURE OF PERSON BEING SEPARATED <b>James N. Bouse</b>					
30. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER <b>R. P. ADELHEIM, 1stLt, EXCO</b>					31. SIGNATURE OF OFFICER AUTHORIZED TO SIGN <b>R. P. Adelheim</b>					

No. 19-737

In the  
Supreme Court of the United States

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JAMES NATHANIEL DOUSE,  
*Petitioner,*

v.

UNITED STATES OF AMERICA, *et al.*,  
*Respondents.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

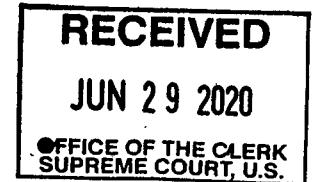
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**PETITION CERTIFICATION OF REHEARING**

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*Petitioner Pro Se*



## CERTIFICATE OF COUNSEL

Pursuant to Supreme Court Rule 44, I, Petitioner 19-737, James Nathaniel Douse, hereby certify that to the best of my knowledge and belief that the circumstances..... for petition for rehearing is presented in good faith and not for delay.

I further Certify that Petition, Appendix, Circuit Court Briefs, District Court Motions and Responses and the Above Statements for Rehearing are Factual True and Correct.

June 24, 2020

James N. Douse, Sr.

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