IN THE
SUPREME COURT OF THE UNITED STATES
JANUARY TERM 2021
No. 20-6177

JOHN LEO DAVIS
Petitioner
-against-
GOODYEAR POLICE DEPARTMENT, et al.,
Respondent's

PETITION FOR REHEARING FOR A WRIT
OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

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I. Argument

A. Standard of Review

The denial of petition for certiorari should not be treated as definitive determination in the Supreme Court, Flynn v. US, 75 S.Ct. 285 (1955). A petition for rehearing of denial of petition for certiorari is part of appellate procedure authorized by Rules of the Supreme Court, subject to requirements of predecessor to Rule 44 on rehearings. (Id). Pursuant to the Supreme Court Rules, "[a]ny petition for the rehearing of an order denying a petition for a writ of certiorari... shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of [] Rule [44], including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented...." see, Rule 44.2 of U.S. Supreme Court Rules; see also, R. Simpson & Co. v. Commissioner, 321 US 225, reh'g denied, 321 US 804 (1944). According to paragraph 1 of Rule 44, "[t]he petitioner shall file 40 copies of the rehearing petition and shall pay the filing fee prescribed by Rule 38(b), except that a petitioner proceeding in forma pauperis under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The petition shall state its grounds briefly and distinctly and shall be served as required by Rule 29...." see, Rule 44.1 of US Supreme Court Rules.

Here, Petitioner has proceeded as in forma pauperis under Rule 39 and he is an inmate incarcerated with the Arizona Dept. of Corrections, therefore he shall file the required number of copies of this petition as prescribed by Rule 12.2. Pursuant to Rule 12.2, "[a] petitioner proceeding in forma pauperis under Rule 39 shall file an original and 10 copies of a petition for a writ of certiorari prepared as required by Rule 33.2, together with an original and 10 copies of the motion for leave to proceed in forma pauperis. A copy of the motion shall precede and be attached to each copy of the petition. An inmate confined in an institution, if proceeding in forma pauperis and not represented by counsel, need file only an original petition and motion." see, Rule 12.2 of US Supreme Court Rules. Nevertheless, here Petitioner has proceeded as in forma paupens, is currently incarcerated, and is not represented by counsel, therefore Petitioner is only required to file the original petition.

Furthermore, a motion for rehearing of order denying certiorari does not automatically suspend order during term, unlike petition for rehearing after full consideration of case on merits. Richmond v. Arizona 434 US 1323 (1977). The Court's stay of execution would continue until expiration of time for rehearing of U.S. Supreme Court's denial of writ of certiorari under its Rule 44.2, however if the motion for rehearing is filed with Supreme Court, final action of Supreme Court will be ~~[illegible]~~ denial of that motion, or, if motion is granted, then as Supreme Court shall order. Blair v. Armontrout, 994 F.2d 532 (8th Cir. 1993).

B. Important Questions of Law

Petitioner has presented four important questions of law in his Petition For a Writ of Certiorari, which are as follows:

1. Whether it is proper for a district court to dismiss a complaint, sua sponte, before process is issued and served, based on grounds of being time-barred by the statute of limitations, when upon the Complaint face value, it could be further developed by means of Leave to amend.

2. Whether an arrestee that is sexually abused, by an opposite-gender official who forcefully used threats and intimidation to photograph arrestee's naked body, in the absent of an emergency situation, is entitled to assert the "blameless ignorance" doctrine outlined in Urie v. Thompson, 337 US 163, 170 (1949); Hearndon v. Graham, 767 So.2d 1179, 1184 (Fla. 2000); or Doe v. Roe, 191 Ariz. 313, 330 (Ariz. 1998), based on the premises that arrestee remained ignorant he had been wronged because the officials served him with a search warrant, giving the officials the authority to photograph his naked body.

3. Whether an arrestee that is sexually abused, by an opposite-gender official who forcefully used threats and intimidation to photograph arrestee's naked body, in the absent of an emergency situation, is entitled to assert the "repressed memory" doctrine in Doe v. Roe, 191 Ariz. 318, 318-26 (Ariz. 1998), based on the premises that arrestee involuntarily blocked the memory of the sexual abuse as a defense mechanism to cope with the traumatic event, delaying the accural of the cause of action until arrestee's first flashback of the sexual abuse.

4. Whether an arrestee that is sexually abused, by an opposite-gender official who forcefully used threats and intimidation to photograph arrestee's naked body, in the absent of an emergency situation, is entitled to assert the "unsound mind" doctrine outlined in Doe v. Roe, 191 Ariz. 313, 325-26 (Ariz. 1998) and in Ariz. Rev. Stat. §12-502, based on the premises that arrestee sufferred from "repressed memory," therefore tolling the statute of limitations until the removal of the disability.

The foregoing questions are, not only, of great importance to Petitioner because they directly affect his ability in tolling the statute of limitations of his claims presented in his complaint, but the questions are of great ~~public~~ public importance because they present a fundamental question of the interpretation of this Court's decision Urie v. Thompson, 337 US 163, 170 (1949), the interpretation of State Supreme Court decisions in Doe v. Roe, 191 Ariz. 313, 322-23 (Ariz. 1998) and Hearndon v. Graham, 767 So.2d 1179, 1184 (Fla. 2000), and the interpretation of several federal circuit decisions in Krug v. Imbordino, 896 F.2d 395, 396 (9th Cir. 1990); Hughes v. Lott, 350 F.3d 1157, 1163 (11th Cir. 2003); Fratus v. DeLand, 49 F.3d 673, 674-75 (10th Cir. 1995); and Nasim v. Warden, Maryland House of Corr., 64 F.3d 951, 959-61 (4th Cir. 1995), which deals with dismissing a complaint, sua sponte, before process is issued and served, based on the grounds of being time-barred by the statute of limitations. In view of the large amount of litigation over the "delayed discovery" doctrine, which affects the statute of limitations, guidance on the questions is of great importance to the public, because it affects the public's ability to bring forth non-frivolous claims, that would otherwise be time-barred by the statute of limitations, by presenting evidence that supports their legal theory of tolling the statute of limitations and/or delaying the accrual of the cause of action until they reasonably discover their right of action.

In the present case, the issue's of importance is enhanced by the fact that the lower courts have seriously misinterpreted the "blameless ignorance" doctrine in Urie v. Thompson, 337 US 163, 170 (1949), which is very problematic. For example, the U.S. District Court for Arizona held "[u]nder Arizona law, a plaintiff 'cannot hide behind his or her ignorance when reasonable investigation would have altered the plaintiff to the claim; instead, the plaintiff must affirmatively and timely investigate if any basis exists for legal action.'" Davis v. Goodyear Police Dept., et al., No. 2:18-CV-02603 at Document 14, P. 6, Lns 24-28, (citations omitted). This Court held in Urie that "[w]e do not think the humane legislative plan intended such consequences to attach to blameless ignorance. Nor do we think those consequences can be reconciled with the traditional purposes of statute of limitations, which conventionally requires the assertion of claims within a specified period of time after notice of the invasion of legal rights." Urie, 337 US at 170. The Supreme Court of Florida reiterated this point and added that the "blameless ignorance" doctrine "delay[s] the accrual of a cause of action until the plaintiff reasonably discovered the right of action, reasoning that 'the traditional purpose of statute of limitations... requires that assertion of claims within a specified period of time after notice of the invasion of legal rights.'" Hearndon, 767 So.2d at 1184 (quoting, Urie, 337 US at 170). Here, at the time of the sexual abuse, Petitioner was "blamelessly ignorant" that he was being sexually abused by Respondent's because Respondent's presented a search warrant to Petitioner, which authorized the Goodyear Police to obtain naked photographs of petitioner. When Petitioner protested to naked photographs being taken of him, Respondents told him that he did not have a choice and that if he did not willing comply, that they would use physical force to obtain the naked photo's. Therefore, Petitioner was completely ignorant as to his rights or that he was even being wronged by being photographed naked by an opposite-gender official.

"'A common thread seems to run through all the types of actions where courts have applied the discovery rule. The injury or the act causing the injury, or both, have been difficult for the plaintiff to detect. In most instances, in fact, the defendant has been in a far superior position to comprehend the act and the injury. And in many, the defendant had reason to believe the plaintiff remained ignorant he had been wronged. Thus there is an underlying notion that plaintiffs should not suffer where circumstances prevent them from knowing they have been harmed. And often this is accompanied by the corollary notion that defendant's should not be allowed to knowingly profit from their injuree's ignorance.'" Doe, 191 Ariz at 330 (quoting, Gust, Rosenfeld & Henderson v. Prudential Ins. Co., 182 Ariz. 586, 589 (Ariz. 1995)). Here, Respondent's knew that Petitioner remained ignorant that he was wronged or injured, when the opposite gender official photographed his naked body — in the absent of an emergency situation being present. Respondent's were in a far superior position to comprehend that having an opposite-gender official photograph Petitioner's naked body, was violating the law and inflicting an injury upon Petitioner, and therefore Respondent's should not be allowed to profit from Petitioners ignorance.

The Supreme Court of Arizona held, "[t]he purpose of the statute of limitations is to protect defendants and courts from stale claims where plaintiff's have slept on their rights," Doe, 191 Ariz at 322 (Internal quotation marks omitted), "[h]owever whether a tort victim or a contract claimant, a blamelessly uniformed plaintiff cannot be said to have slept on his rights." Gust, 182 Ariz. at 590-91. "One does not sleep on his or her rights with respect to an unknown cause of action. Thus Arizona law recognizes that 'one of the fundamental reasons underlying the philosophy of these statutes—the presumed invalidity of a claim allowed to become stale—is not present in the case where the injured plaintiff has no knowledge that such a claim exists.'" Doe, 191 Ariz. at 322 (quoting, Mayer v. Good Samaritan Hosp., 14 Ariz 248, 251-52 (1971)). "Under the discovery rule, [] a cause of action does not accure until the plaintiff knows or with reasonable diligence should know the facts underlying the cause." (Id) (citing, Gust, 182 Ariz. at 588). "The rationale offered for the discovery rule 'is that it is unjust to deprive a plaintiff of a cause of action before the plaintiff has a reasonable basis for believing that a claim exists.'" (Id) (quoting, Gust, 182 Ariz. at 589). Although, "[a] plaintiff need not know all the facts underlying a cause of action to trigger accrual[,] Richards v. Powercraft Homes, Inc., 139 Ariz. 264, 266 [] (App. 1983), vacated in part, 139 Ariz. 242 [] (1984)[,] the plaintiff must at least posses a minimum requisite of knowledge sufficient to identify that a wrong occurred and caused injury." Doe, 191 Ariz at 323 (citing, Lawhon v. L.B.J. Inst. Supply Inc., 159 Ariz. 179, 183 (App. 1988)).

In addition to Petitioner being "blamelessly ignorant" that he was even wronged, at the time he was sexually abused, Petitioner also suffered from "Memory Repression," and did not have any memory of the sexual abuse until he triggered his first flashback on January 9th, 2018. The Supreme Court of Arizona held that "[m]emory repression, also referred to as selective amnesia, traumatic amnesia, and dissociative amnesia, has been documented in various contexts among persons who have survived severe trauma, including concentration camp survivors, combat veterans, and victims of [sexual] abuse." Doe, 191 Ariz. at 318 (footnote omitted). "In laymen's terms, memory repression is the involuntary blocking of memory so that the memory remains stored but inaccessible to the conscious mind. Repression is a psychological defense mechanism that protects the individual from being confronted with the memory of an event that is too traumatic to cope with." (Id at 319). "Physiological research conducted on the functioning of memory demonstrates the brain's biological capacity to retain memories yet prevent conscious access to them." (Id)(citation omitted). "The memory is not lost but remains dormant and inaccessible. The individual functions with no conscious awareness of the traumatic event. Researchers and clinicians attest that the inaccessible memory may nonetheless adversely impact the individual's psychological well-being and is frequently manifested by substance abuse, severe depression, suicidal tendencies, and sexual and social dysfunctions." (Id). (citation omitted). "Repressed memories are, however, only temporarily inaccessible. Research on the biology of memory verifies the brain's capacity to retrieve previously inaccessible memory in response to stimuli. [(footnote omitted)] These stimuli, commonly referred to as triggers, include sensory experiences, therapy, and spontaneous recall." (Id). "In addition, the biological functioning of memory may leave persons who experience trauma incapable of synthesizing a narrative description of the event." (Id)(footnote omitted). "The jury must determine at what point plaintiff's knowledge, understanding, and acceptance in the aggregate provide sufficient facts to constitute a cause of action. We take as instructive the Utah Supreme Court's remand instructions in Olsen v. Hooley, 865 P.2d 1345 (Utah 1993). After determining the discovery rule applied in cases involving repressed memory the Court stated: 'If the fact-finder finds for [Plaintiff] on [this] issue, it must then ascertain at what point [he] recalled the abuse. It is at that point the limitations period began to run.' Id at 1350; see also Osland v. Osland, 442 N.W.2d 907, 909 (N.D. 1989); Hammer v. Hammer, 142 Wis.2d 257 [] (Wis. App. 1987)." Doe, 191 Ariz. at 324. Although, a plaintiff "is charged with the duty to investigate with due diligence to discover the necessary facts..., the reasonable diligence component of the discovery rule does not impose a rigid investigation and discover standard that ignores the psychology of repressed memory. Doe [v. Roe], 187 Ariz [605,] 615 [(App. Ariz. 1996)] []." Doe, 191 Ariz. at 324. "To impose such a standard to memories that may be physiologically inaccessible to the conscious mind is antithetical to the policy behind the discovery rule." (Id)(citing, Gust, 182 Ariz. at 589). However, "if an investigation and discover standard exist[s], [then] plaintiffs actions [will] at least present [] a question for the jury." (Id at 324-25)(citing Doe, 187 Ariz at 615).

Furthermore, the Supreme Court of Arizona held "the Arizona legislature has enumerated [two] conditions that toll the running of the statute of limitations—minority [and] unsound mind... So far as relevant, ARS §12-502 states: 'If a person entitled to bring an action... is at the time the cause of action accrues... of unsound mind, the period of such disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the same time after removal of the disability which is allowed to others.'" (Id at 325). "The statutory provision for tolling based on unsound mind is premised on equitable principles similar to those that underlie the discovery rule: it is unfair to bar an action in which the plaintiff is mentally disabled and thus unable to appreciate or pursue his or her legal rights." (Id) (citing, Vega v. Morris, 184 Ariz. 461, 463-64 (1996) (footnote omitted); see also, O'Neal v. Div. of Family Servs., 821 P.2d 1139, 1142 (Utah 1991).

"Note that cases cited in Florez [v. Sargeant, 185 Ariz. 521 (1996)] supports the proposition that the effects of repressed memory would support a claim for unsound mind. In Doe v. Coffee County Board of Ed[.], 852 S.W.2d 899, 905-06 (Tenn. App. 1992), the court indicated that repression of memory of abuse would comprise unsound mind for the tolling of limitation period. In Hildebrand v. Hildebrand, 736 F.Supp. 1512, 1524 (S.D. Ind. 1990), the court held that while the discovery rule was not applicable under Indiana law, the limitations period for plaintiff's physical and sexual abuse claims could be tolled nonetheless under the doctrine of fraudulent concealment. Likewise, in O'Neal, 821 P.2d at 1143-45, the court indicated that repression of memory might toll the statute of limitations under the discovery rule." Doe, 191 Ariz. at 325 n.14. Here, given Petitioner suffered from "Memory Repression" and did not have his first flashback until January 9th, 2018, Petitioner could raise a claim of "Unsound Mind," to toll the statute of limitations.

"[T]he important inquiry in applying the discovery rule is whether the plaintiff's injury or conduct causing the injury is difficult for plaintiff to detect; not whether the action sounds in contract or in tort.... The defense of statute of limitations is never favored by the Courts, and if there is doubt as to which of two limitation periods should apply, courts generally apply the longer." Doe, 191 Ariz. at 330. (citing, Gust, 182 Ariz at 590). Here, the Ninth Circuit panel of Judge's erroneously affirmed the US District Court of Arizona sua sponte ruling, which was before process was issued and served, based on the grounds that Petitioner's complaint was properly dismissed with prejudice and without leave to amend—as being time barred by the statute of limitations, Davis v. Goodyear Police Dept., 796 Fed.Appx. 449, 449 (9th Cir. 2020), however such ruling is directly contrary to the holding of four federal circuits, Krug, 896 F.2d at 396; Hughes, 350 F.3d at 1163; Fratus, 49 F.3d at 674-75; and Nasim, 64 F.3d at 959-61, as well as being inconsistant with the delayed discovery doctrine in two State Supreme Courts. Doe, 191 Ariz. at 322-23; Hearndon, 767 So.2d at 1184. The Ninth Circuit has previously "concluded that the district court may sua sponte dismiss a complaint as untimely so long as the defendant has not waived the defense." Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 687 (9th Cir. 1993) (citing, Leonhard v. US, 633 F.3d 599, 609 n.11 (2d Cir. 1980)). Several circuits have held that "Defendant's have the burden of demonstrating that the statutory period ha[s] run before [Petitioner] filed his action." Covey v. Strickland, 479 F.3d 412, 416 (6th Cir. 2007); Tell v. Dean Witter Reynolds, Inc., 494 F.3d 956, 974 (11th Cir. 2007) (Same); Fratus, 49 F.3d at 675. When a defendant raises a defense in their answer to plaintiff's complaint that such is time-barred, the burden of proof falls upon plaintiff to prove that they are entitled to tolling of the statute of limitations. Firstcom Inc. v. Quest Corp., 555 F.3d 669, 675 (8th Cir. 2009). Here, Petitioner's Complaint was dismissed, sua sponte, as being untimely, however such dismissal was done before Respondent's either affirmed or waived the defense of statute of limitations or demonstrating that the statutory period has expired, and therefore the district

Court denied Petitioner's Due Process of law—prejudicing him. Respondent's could have very well waived the statutory defense or Petitioner could have proven that he was entitled to the tolling of the Statute of limitations.

Here, the Ninth Circuit holding that Petitioner's complaint was properly dismissed with prejudice and without leave to amend, as being barred by the statute of limitations, Davis, 796 Fed.Appx at 449, is inconsistent with their prior holding in Krug. In Krug, the Petitioner did not file his 1983 complaint until "three to four years after the alleged constitutional violations occurred..., [in-which] [t]he district court...dismissed the complaint sua sponte on the ground that they were barred by the statute of limitation..., [however the Ninth Circuit] reversed in an unpublished memorandum disposition because the trial judge prematurely dismissed before process was issued and served..., [given] that the statute of limitations was not jurisdictional, but rather an affirmative defense." Krug, 896 F.2d at 396 (citing, Krug v. Imbordino, 742 F.2d 1462 (9th Cir.1984)). In addition to the Ninth Circuit holding in Davis, 796 Fed.Appx. at 449, such holding is inconsistent with the holding of several other circuits, as it pertains to the statute of limitations. For example, in Hughes, they held "the district court dismissed [Petitioner's] [] claims under the Fourteenth Amendment on the grounds that they were filed outside of [the] two-year statute of limitations applicable to §1983 actions and were therefore frivolous under 28 USC 1915(e)(2)(B)(i)..., [however] [t]o dismiss a prisoner's complaint as time-barred prior to service, it must 'appear beyond a doubt from the complaint itself that [the prisoner] can prove no set of facts which would avoid a statute of limitation bar.'" Hughes, 350 F.3d at 1163 (quoting, Leal v. Ga. Dept. of Corr., 254 F.3d 1276, 1280 (11th Cir. 2001)). The Eleventh Circuit further held that Petitioner "asserts, [] that he may be able to show that the limitations period was tolled if he is given a chance to amend his complaint.... Thus, if [Petitioner] is able to plead facts that would support a finding that the statute of limitations has been tolled, he should be granted leave to amend his complaint." (Id). In Fratus, they held when "contemplating dismissal under section 1915(d), the district court may consider affirmative defenses sua sponte only when the defense is 'obvious from the face of the complaint' and '[n]o further factual record [is] required to be developed.'" Fratus, 49 F.3d at 674-75 (quoting, Yellen v. Cooper, 828 F.2d 1471, 1476 (10th Cir. 1987)). Finally, in Nasim, they held in a dissenting opinion that "[a] district court has discretion to dismiss an in forma pauperis complaint 'if satisfied that the action is frivolous or malicious,' 28 USC §1915(d).... [However,] a waivable affirmative defense that has not been raised by any party, like the limitations defense here, can provide the basis for dismissal only if the defense is clear from the face of the complaint. Thus, prior to receipt of any pleading raising the defense, a district court has no discretion to dismiss an in forma pauperis action on the basis of a waivable affirmative defense if that defense is not clear from the face of the

Complaint. This has long been the rule in this circuit [], and is consistent with the well-established principle that an affirmative defense can provide the basis for dismissal under Fed.R.Civ.P. 12(b)(6) 'only if [that defense] clearly appears on the face of the complaint.' Richmond, Fredericksburg & Potomac R.Co. v. Forst, 4 F.3d 244, 250 (4th Cir. 1993)... Not all such prisoner suits are frivolous or malicious..., [and] we cannot dismiss or affirm the dismissals of such suits merely because we do not like them or because most of them are frivolous. Rather, the Supreme Court has directed that federal courts are to construe all pro se complaints 'liberally.'" Nasim, 64 F.3d at 959-61 (citing, Boag v. MacDougall, 454 US 364, 365 (1982) (per curiam) (reversing §1915(d) dismissal)). "'In other words, the §1915(d) frivolous determination, frequently made sua sponte before the defendant has even been asked to file an answer, cannot serve as a factfinding process for the resolution of disputed facts.... Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without any factual development is to disregard the age-old insight that many allegations might be 'strange, but true; for truth is always strange, stranger than fiction.'" (Id) (quoting, Denton v. Hernandez, 504 US 25, 32-33 (1992)).

Here, the US District Court of Arizona relied on cases from six federal circuits, Levald, 998 F.2d at 687; Pino v. Ryan, 49 F.3d 51, 53-54 (2d Cir. 1995); Moore v. McDonald, 30 F.3d 616, 620-21 (5th Cir. 1994); Johnson v. Rodriguez, 943 F.2d 104, 107-08 (1st Cir. 1991); Hughes, 350 F.3d at 1163; and Nasim, 64 F.3d at 956, which the court misinterpreted some cases and the other cases supported the courts holding—as it pertains to dismissing a complaint sua sponte, as being time-barred by the statute of limitations. The US District Court of Arizona holding that Petitioner's Complaint is time-barred and the cases relied upon are unconvincing and a misapplication of the law. In Levald, the Court held that a district court may dismiss a complaint sua sponte as being untimely, only when the defendant has not waived the defense. Levald, 998 F.2d at 687. It makes absolutely no sense for a district court to dismiss a complaint sua sponte, as being time-barred, before defendant has been made aware of the complaint against them, given defendant could either overlook the statute of limitation defense, or could waive the statute of limitation defense. Here, the District Court Judge never ordered Respondent's to answer the complaint, nor were Respondents served the complaint, therefore Respondent's were not given the opportunity to waive or pled the statute of limitation defense. In anything, the Levald Court's holding supports Petitioner's position, which is, the District Court Judge erred in dismissing his complaint, sua sponte, as being time-barred by the statute of limitations—before Respondent's were served and answered the complaint. Next, in Pino, the court held that a suit that is dismissed, sua sponte, raising of the limitation defense—at the threshold—before any time or expense has been expended to be appropriate, especially when plaintiff has the opportunity to file a timely motion for reconsideration, alleging additional facts that might exist, which could affect the limitation period. Pino, 49 F.3d at 53-54. However, the Pino

Court further held that an affirmative defense appearing on the face of a complaint, may not be the basis for a sua sponte dismissal under section 1915(d) prior to service of the complaint. (*Id*). Here, Petitioner's complaint was dismissed after the District Court Judge imposed the in forma pauperis filing fee's upon Petitioner, which is inconsistent with the Pino Court's holding that a complaint can only be dismissed sua sponte, based upon the limitation defense, before any time or expenses has been expended. In addition, because on the face of Petitioner's complaint, it suggested an affirmative defense—namely the statute of limitation defense, the District Court Judge erred on basing their sua sponte dismissal of the complaint under section 1915(d), prior to service of the complaint. Although Petitioner filed a timely motion for reconsideration—clarifying and alleging additional facts that would toll and/or delay the accrual of the cause of action, such lead to no avail because the motion was denied. The Pino Court's holding actually supports Petitioner's position that the District Court Judge erred in prematurely dismissing his complaint, before service upon Respondent's. Next, in Moore, the Court held the district court correctly concluded that Moore's claim as to the alleged unreasonable search of his car was time-barred because he was aware that he suffered an injury or had sufficient information to know that he had been injured. Moore, 30 F.3d at 621. This case is misplaced and distinguishable to Petitioner's case. For example, in Moore, plaintiff knew that he was subjected to an illegal pretextual stop in violation of his 4th Amendment and that his car was unreasonably searched. However, how Moore is distinguishable from Petitioner's case is, that Petitioner did not know that he was being wronged or injured at the time of the occurrence. Petitioner was in shock and confused that an opposite-gender official photographed his naked body, coupled with the fact that Respondent's presented a search warrant to Petitioner—authorizing the photographing of his naked body, as well as Respondent's authoritative demands through threats and intimidation for Petitioner to comply with the photographing of his naked body, that Petitioner was "blamelessly ignorant" that he was even being wronged or injured, at the time of occurrence and that Petitioner had "memory repression" of all memory of the sexual abuse—an unconscious mechanism of coping with the traumatic event. Just like cases involving a breech of implied warranty or medical malpractice cases, it would be equally unfair to deny a victim of sexual abuse, who's suffering from "memory repression," the application of the delayed discovery doctrine, given the nature of the alleged tortious conduct and it's effect it has on the victim, therefore such doctrine is applicable to sexual abuse cases and is consistent with the application of the doctrine to tort cases. Hearndon, 767 So.2d at 1188. Here, the District Court Judge's reliance on Moore is unconvincing and not applicable to the circumstances surrounding the facts in Petitioner's case. Next, in Johnson, it involves employment discrimination claims brought under section 1981, which the plaintiff argued a continuing violation theory, that the statute of limitations were tolled by reasons of ongoing discriminatory practices. Johnson, 943 F.2d at 107-08. Here, the District Court Judge's reliance of Johnson is completely misplaced. Petitioner's complaint was brought under section 1983 and involves sexual abuse, which has nothing to do with employment discrimination claims brought under section 1981, nor does Petitioner's claim involve ongoing discriminatory practices, therefore Johnson case authority is not on point and cannot be used as controlling case authority in Petitioner's case to uphold the dismissal of a Complaint, sua sponte, on the basis of being time-barred. Next, in Hughes, the court held that the district court dismissed plaintiff's claims on the grounds that they were time-barred by the Statute of limitations and therefore frivolous under 28 USC §1915(e)(2)(B)(i). Hughes, 350 F.3d at 1163. The Hughes Court further held that in order to dismiss a prisoners complaint as being time-barred prior to service, it must appear beyond a doubt from the complaint itself that plaintiff cannot prove any set of facts which would avoid a statute of limitations, however if plaintiff would be able to pled his facts to show that the limitation period was tolled by the means of amending his pleading, then the Court should grant leave to amend the complaint. (Id). Here, the District Court Judge erred in dismissing Petitioner's complaint, sua sponte, as being untimely, because not only could Petitioner prove the alleged facts in his complaint, Petitioner could have easily clarified and pled additional facts, in-order to support the tolling of the statute of limitations, that is, if he was granted leave to amend his complaint. Here, the Hughes Courts holding actually supports Petitioner's position that the District Court Judge erred in dismissing his compleint, sua sponte, before service upon Respondent's. Finally, in Nasim, the Court held that plaintiff possessed sufficient knowledge of his cause of action to place him on inquiry notice, and therefore the district court did not abuse it's discretion in concluding that the action was frivolous under 28 USC §1915(d), because the complaint was time-barred. Nasim, 64 F.3d at 956. As correctly held by dissenting circuit Judge Motz, Chief Judge Ervin, Judge Murnaghan, and Judge Michael, in Nasim, "a waivable affirmative defense that has not been raised by any party, like the limitations defense, [] can provide the basis for dismissal only if the defense is clear from the face of the complaint. Thus, prior to receipt of any pleading raising the defense, a district court has no discretion to dismiss an in forma pauperis action on the basis of a waivable affirmative defense if that defense is not clear from the face of the complaint." (Id at 959). Here, not only could Petitioner prove, from the face of his complaint, that the statute of limitations were tolled, Petitioner could have afforded additional facts, that is, if he was granted leave to amend his complaint. Therefore, here the District Court Judge erred in dismissing Petitioner's Complaint, sua sponte, based on grounds of being time-barred, given Petitioner was denied leave to amend his complaint to state additional facts to overcome the statute of limitations.

Furthermore, here, the District Court Judge relied on Shafer v. McCombs; 2018 WL 17500496 at 3 (Ariz. Ct. App. Apr. 12th, 2018), which states in relevant part, that a plaintiff "cannot hide behind his [ ] ignorance when reasonable investigation would have alerted the plaintiff to the claim, the plaintiff must affirmatively and timely investigate if any basis exist for legal action," (Id), however Shafer Court's holding in inconsistent with the "blameless ignorance" doctrine in Urie, 337 US at 170, as well as with the "delayed discovery" doctrine in Doe, 191 Ariz. at 322-25; 331, and Hearndon, 767 So.2d at 1184. Nevertheless, Shafer Court's holding is problematic, because a plaintiff who is "blamelessly ignorant" would not necessarily have any reason to believe or anything to alert them into investigating a situation to determine if any basis exist for legal action, that is, because in most cases an ignorant plaintiff does not even realize that they have been wronged or injured. Therefore, it would be unjust and prejudicial to an ignorant plaintiff for a court to expect them to conduct an investigation into a situation where they don't know that they have been wronged, injured, or that an issue even exist. Although, the Ninth Circuit held that a "unsound mind equitable tolling may not be established by 'conclusory averments such as assertions that one was unable to manage daily affairs or understand legal rights and liabilities' but rather requires plaintiff to set forth 'specific facts,'" Davis, 796 Fed Appx. at 449 (citing, Doe, 191 Ariz. at 326), however "cases cited in Florez supports the proposition that the effects of repressed memory would support a claim for unsound mind." Doe, 191 Ariz at 326 n.14. Here, Petitioner has set forth "specific facts" in his complaint, that he suffered from "Memory Repression," was "blamelessly ignorant," and was of "unsound mind" and did not have any memory or flashback of being sexually abused, until his first flashback, which was triggered on January 9th, 2018, which is at that point the statute of limitation period began to run. (Id at 324).

In sum, in the present case, the lower Courts have seriously misinterpreted this Court's holding in Urie, by failing to recognize the "blameless ignorance" doctrine, as well as misinterpreted the State Supreme Court's holding in Doe v. Roe and Hearndon v. Graham by failing to recognize the "delayed discovery" doctrine. In addition, there is a serious misinterpretation and conflicting decisions in Davis v. Goodyear Police Department, with King v. Imbordino; Hughes v. Lott; Fratus v. DeLand; and Nasim v. Warden Maryland House of Corr., as it pertains to dismissing a complaint, sua sponte, before process is issued and served, based on the grounds of being time-barred by the statute of limitations, when its clear upon the face of the complaint, that if leave to amend was given—that additional facts could be stated to overcome the statute of limitations. Given, there seems to be serious confusion between the lower courts as to when a district court may dismiss a complaint, sua sponte, prior to service, on the basis of being time-barred, as well as when a plaintiff may raise a claim under the "blameless ignorance" doctrine in Urie v. Thompson and/or the "delayed discovery" doctrine in Doe v. Roe or Hearndon v. Graham, this Court should correct any misinterpretations and give clear guidance to the issues in question, because this not only affects Petitioner's ability in bringing forth his non-frivolous claims, this also affects the Nation as a whole in bringing forth non-frivolous claims that would otherwise be time-barred by the statute of limitations. Therefore, based upon the foregoing, Petitioner respectfully request intervention from this Court, and for this Writ of Certiorari be granted.

C. Prisoner Mailbox Rule

There is a special rule for pro se prisoner litigants who file legal papers by mail, called the "Prisoner Mailbox Rule." This Court has held that a pro se prisoner's legal documents are deemed filed on the day it is delivered for mailing to prison authorities, rather than applying the usual rule that it is filed the day it arrives at court, since the litigant loses control over the document as soon as he turns it over to prison personnel. Houston v. Lack, 487 US 266, 273-76 (1988); See also, Stoot v. Cain, 570 F.3d 669, 671-72 (5th Cir. 2009) (rules applies to papers given timely to prison authorities for mailing, even if they never reach the court). In order for the Mailbox Rule to apply to a prisoner, if there is a system designed specially for legal mail, the prisoner must use that system, and the prisoner must also submit a declaration or notorized statement indicating when the legal documents were placed into the prison mail system. Douglas v. Noelle, 567 F.3d 1103, 1108-09 (9th Cir. 2009); Price v. Philpot, 420 F.3d 1158, 1164-65 (10th Cir. 2005).

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II. Conclusion

WHEREFORE, based upon the foregoing argument and with good cause showing, Petitioner respectfully request this Court to grant this Petition For Rehearing and enter orders accordingly. It's further requested that this Court grant any other entitled relief that's deemed just and proper.

DATED this 25th day of March, 2021.

John Davis

CERTIFICATION OF COUNSEL

I, John Davis, hereby certify that I am a pro se Petitioner in this case. I drafted this Petition For Rehearing For Writ of Certiorari, which is in compliance with Rule 44 and Rule 33.2 (b) of the US Supreme Court Rules. I bring forth this Petition For Rehearing in good faith and without delay.

I hereby declare under penalty of perjury, pursuant to 28 USC § 1746, that the foregoing is true and correct to the best of my knowledge.

DATED this 25th day of March, 2021.

John Davis

CERTIFICATION OF SERVICE

I hereby declare under penalty of perjury, pursuant to 28 USC § 1746, that I mailed, via US Mail, the foregoing Petition For Rehearing For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit and Motion For Leave To Proceed In Forma Pauperis, as required by Supreme Court Rule 29, by placing these documents in an envelope and hand delivered the envelope to the Mail and Property Staff at the Arizona State Prison Complex-Tucson, Rincon Unit, at 10000 S. Wilmot Road, Tucson, Arizona 85734-4401, on March 25th, 2021 and mailed them to: Clerk of the Court, United States Supreme Court, 1 First Street, N.E., Washington, D.C. 20543; and served copies, via US Mail, to the following:

Goodyear Police Department
Attn: Jerry Geier; James Dougal; Noah Yeo; and Lori Ohrt
190 N. Litchfield Road
Goodyear, Az. 85338
Respondent's

By: [signature]
John Davis