

No. 21-1371

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**In The  
Supreme Court of the United States**

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PATRICIA MORRISON,  
Administrator for the Estate of Tommy Morrison,  
*Petitioner,*

v.

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

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

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**BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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and John Hiatt, Ph.D.*

**QUESTION PRESENTED**

1. Was the Ninth Circuit correct in affirming the district court's denial of Petitioner's post-judgment motion seeking "DNA/HIV" testing on alleged "newly discovered evidence" in a civil case that had been closed for almost five years?

Respondents Quest Diagnostics Incorporated's [f/k/a APL Healthcare Group, Inc.] ("Quest Diagnostics") and John Hiatt, Ph.D. object to each of Petitioner's "Questions Presented" because, as stated, Petitioner's "Questions Presented": (1) contain claims either not presented to, or not considered by, the courts below; (2) assume facts contrary to the evidence in the record; and (3) are premised upon misstatements of law.

## STATEMENT PURSUANT TO RULE 29.6

Respondent Quest Diagnostics Incorporated [f/k/a APL Healthcare Group, Inc.], incorporated in Nevada, is a wholly-owned subsidiary of American Medical Laboratories, Incorporated, a Delaware corporation. American Medical Laboratories, Incorporated, is a wholly-owned subsidiary of Defendant Quest Diagnostics Incorporated, a Delaware corporation. Quest Diagnostics Incorporated, a Delaware corporation, is a publicly-traded company on the New York Stock Exchange.

Respondent John Hiatt, Ph.D., is an individual.

## STATEMENT OF RELATED CASES

*Patricia Harding Morrison v. Quest Diagnostics, Inc., et al.*, Case No. 2:14-cv-01207-RFB-PAL, in the United States District Court for the District of Nevada, **October 24, 2016**—Order granting Summary Judgment on each of Plaintiff’s claims.

*Patricia Harding Morrison v. Quest Diagnostics, Inc., et al.*, Case No. 16-17050, in the United States Court of Appeals for the Ninth Circuit, **October 3, 2017**—Order and Memorandum affirming District Court’s grant of Summary Judgment on each of Plaintiff’s claims.

*Patricia Morrison v. Quest Diagnostics, Inc., et al.*, Case No. 17-1537, in the United States Supreme Court, **October 1, 2018**—Order denying Petitioner’s Petition for Writ of Certiorari.

**STATEMENT OF RELATED CASES—Continued**

*Patricia Harding Morrison v. Quest Diagnostics, Inc., et al.*, Case: 21-15277, in the United States Court of Appeals for the Ninth Circuit, **December 21, 2021**—Order and Memorandum affirming District Court’s denial of Plaintiff’s motion for DNA/HIV testing and/or to re-open closed case.

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Pursuant to Supreme Court Rule 15.2, Respondents Quest Diagnostics Incorporated [f/k/a APL Healthcare Group, Inc.] (“Quest Diagnostics”) and John Hiatt, Ph.D. (collectively “Respondents”) submit their opposition to Petitioner Patricia Morrison’s, as Administrator for the Estate of Tommy Morrison (“Petitioner”), Petition for Writ of Certiorari and respectfully request that this Court deny the Petition.

## **I. CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, & REGULATIONS INVOLVED**

This case does not involve interpretation of statutory or constitutional provisions.

## **II. STATEMENT OF THE CASE**

### **A. Introduction.**

Respondents object to Petitioner’s statement of the case. This case has been closed since October 2016, when the district court granted Respondents’ motion for summary judgment and dismissed Petitioner’s claims with prejudice. An accurate statement of the Petitioner’s allegations and claims and the undisputed facts considered by the district court in the underlying prior proceedings is set forth in the district court’s October 24, 2016 order granting summary judgment, which is incorporated herein by reference. *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-PAL, 2016 U.S. Dist. LEXIS 147464 (D. Nev. Oct. 24, 2016), *aff’d*, 698 F. App’x 350 (9th Cir. 2017), *cert. denied* 139

S. Ct. 86, 202 L. Ed. 2d 26 (2018). Petitioner exhausted her appellate remedies related to the underlying proceedings in a previous appeal. The only order properly before this Court for consideration is the district court's denial of a post-judgment motion, seeking "DNA/HIV" testing of an alleged tissue specimen of the late Tommy Morrison, filed by Petitioner almost five years after the district court entered summary judgment and Judgment in the underlying matter.

This appeal from a closed diversity action arises solely under the Federal Rules of Civil and Appellate Procedure. There is no federal question, federal circuit split, or other compelling reason to grant a Petition for Writ of Certiorari. Both the district court and the court of appeals correctly applied well-established principles governing post-judgment motions and federal procedure. The Petition is based entirely on Petitioner's unsupported personal opinions and is replete with misstatements of the facts, the law, and the prior proceedings.

## **B. Factual Background.**

This case arises from an HIV antibody test performed in February 1996 as part of an application by the late Tommy Morrison to obtain a Nevada boxing license. Quest Diagnostics tested Tommy Morrison's blood sample for HIV-1 antibodies, complying with the clinical laboratory standard of care for HIV testing in 1996. His test result was "Positive for Western Blot." Since Tommy Morrison was unable to provide a

negative HIV laboratory test report, the Nevada State Athletic Commission denied his license application and a scheduled boxing match was cancelled. Immediately thereafter, Tommy Morrison submitted to additional HIV testing by other laboratories. From 1996 until his death in 2013, Tommy Morrison was repeatedly tested, diagnosed, and treated for HIV and/or AIDS by various physicians, including HIV specialists, using different HIV testing methods—all of which confirmed his HIV infection.<sup>1</sup> Tommy Morrison died on September 1, 2013.

### **C. Procedural History.**

#### **1. Prior Proceedings—Summary Judgment and First Appeal.**

In 2014, Petitioner, on behalf of and as the surviving spouse of Tommy Morrison, filed a diversity action pursuant to 28 U.S.C. § 1332 in the United States District Court for the District of Nevada alleging various Nevada state law tort claims against Respondents and others arising from the February 1996 HIV laboratory test result of a blood specimen provided by her late

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<sup>1</sup> As early as 1996, Tommy Morrison began questioning the existence of HIV, claiming the 1996 test result was a false positive, and frequently refusing standard treatment for HIV infection. During his attempted return to professional boxing in 2007, Tommy Morrison publicly stated that he was not actually infected with HIV, repeatedly alleged that Quest Diagnostics's February 1996 HIV-1 antibody test result was inaccurate and ceased treatment for HIV—which he continued to refuse intermittently until his death in 2013. Petitioner did not meet Tommy Morrison until 2009.

husband Tommy Morrison to obtain a Nevada boxing license.<sup>2</sup> The gravamen of Petitioner's claims against Respondent Quest Diagnostics was that it negligently tested and reported Tommy Morrison's blood specimen positive for HIV-1 antibodies, which resulted in the denial of his application for a Nevada boxing license.

On October 24, 2016, the district court granted Respondents' motion for summary judgment on each of Petitioner's claims,<sup>3</sup> finding that in addition to being barred by limitations, Petitioner failed to adduce any evidence supporting her claims. *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-PAL, 2016 U.S. Dist. LEXIS 147464, at \*16–17 (D. Nev. Oct. 24, 2016). Petitioner appealed, and on October 3, 2017, the Ninth Circuit Court of Appeals affirmed the district court's dismissal of Petitioner's claims.<sup>4</sup> *Morrison v. Quest*

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<sup>2</sup> Petitioner alleged that, *inter alia*, Tommy Morrison: (1) never had HIV; (2) was never tested for, diagnosed with, or treated for HIV after Quest Diagnostics's February 1996 test; and (3) died of health issues unrelated to HIV. Contrary to these allegations, medical records obtained in discovery and other evidence confirmed that Tommy Morrison had been repeatedly tested, diagnosed, and treated for HIV by health care providers after Quest Diagnostics's test in 1996 and up to his death in 2013.

<sup>3</sup> The undisputed summary judgment evidence demonstrated that, *inter alia*, Quest Diagnostics's February 10, 1996 HIV-1 antibody test result was accurate, met the standard of care for HIV testing in 1996, and was subsequently confirmed by independent testing. *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-PAL, 2016 U.S. Dist. LEXIS 147464, at \*19–20 (D. Nev. Oct. 24, 2016).

<sup>4</sup> In her previous appeal, Petitioner also asserted meritless claims not considered by the district court, such as her allegation that clinical laboratories in the United States—including the U.S.

*Diagnostics, Inc.*, 698 F. App'x 350 (9th Cir. 2017). The Ninth Circuit denied Petitioner's subsequent request for a panel rehearing and petition for a rehearing *en banc* on February 26, 2018. *Morrison v. Quest Diagnostics, Inc.*, No. 16-17050, 2018 U.S. App. LEXIS 4738 (9th Cir. Feb. 26, 2018). This Court denied Petitioner's Petition for Writ of Certiorari on October 1, 2018, *Morrison v. Quest Diagnostics, Inc.*, 139 S. Ct. 86, 202 L. Ed. 2d 26 (2018), and denied her Petition for Rehearing on November 19, 2018. *Morrison v. Quest Diagnostics, Inc.*, 139 S. Ct. 584, 202 L. Ed. 2d 416 (2018).

## **2. Post-Judgment Motions and Second Appeal.**

Undeterred by the dismissal of her claims with prejudice, and despite having exhausted all appellate remedies, Petitioner continued to file vexatious and harassing motions in the closed lawsuit. On August 5, 2019, Petitioner filed a post-judgment motion in the district court to re-open this matter alleging, without support, that “new” evidence existed that demonstrated counsel for Respondents had engaged in misconduct and “fraud on the court.” The district court denied Petitioner's motion to re-open on January 14, 2020. *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-BNW, 2020 U.S. Dist. LEXIS 6017 (D. Nev. Jan. 14, 2020).

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Centers for Disease Control—were performing HIV-1 antibody tests that were not clinically useful or appropriate for identifying HIV infection in humans.

On February 7, 2020, Petitioner filed another post-judgment motion requesting that the district court order Quest Diagnostics produce to her the original electronic media (a compact disc) containing certain medical records obtained by Quest Diagnostics in discovery. On February 11, 2020, Petitioner filed a motion for reconsideration of the district court's denial of her motion to re-open. On July 14, 2020, Petitioner filed an *Ex Parte* Petition for an Order for the release of certain medical records of Tommy Morrison. The district court denied each of Petitioner's pending post-judgment motions on July 16, 2020. *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-BNW, 2020 U.S. Dist. LEXIS 129997 (D. Nev. July 16, 2020). Petitioner did not appeal from the district court's denial of any of these post-judgment motions.

Approximately two weeks after her motions were denied, and almost five years after the district court entered summary judgment of each of her claims against Respondents, Petitioner filed yet another post-judgment motion—again without support—requesting “DNA/HIV” testing be performed on an alleged “newly discovered” preserved-tissue specimen allegedly collected from Tommy Morrison.<sup>5</sup> Petitioner asked the district court to order such testing because she alleged

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<sup>5</sup> On the face of her Petition, and in her motion to the district court and on appeal to the Ninth Circuit, it is clear that Petitioner sought HIV testing, not DNA testing, of the alleged preserved tissue specimen of Tommy Morrison. Petitioner apparently conflated HIV testing with DNA testing so that she could present facially inapplicable statutes as support for her request for court-ordered HIV testing.

that the testing would demonstrate that Tommy Morrison did not have HIV or AIDS, and that he did not die from AIDS-related illnesses. On January 12, 2021, the district court denied Petitioner's post-judgment motion for lack of any viable legal basis and instructed the Clerk of the Court to not accept any further filings from Petitioner. *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-BNW, Dkt. No. 335.

On February 10, 2021, Petitioner mailed her Notice of Appeal from the district court's January 12, 2021 denial of her post-judgment motion for "DNA/HIV" testing to the district court clerk, which was received by the district court clerk on February 16, 2021. On February 18, 2021, the Ninth Circuit Court of Appeals ordered Petitioner to show cause why her appeal should not be dismissed for lack of jurisdiction since Petitioner's Notice of Appeal was not filed within 30 days of entry of the district court's January 12, 2021 post-judgment order as required by 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A). Petitioner filed motions in both the district court and in the Ninth Circuit explaining that her Notice of Appeal was not timely filed due to a delay by a commercial courier caused by inclement weather and seeking leave to file her Notice of Appeal out-of-time. The Ninth Circuit stayed appellate proceedings pending the district court's ruling on Petitioner's motion. *Morrison v. Quest Diagnostics, Inc.*, No. 21-15277, 2021 U.S. App. LEXIS 17264 (9th Cir. June 9, 2021).

On June 14, 2021, the district court granted Petitioner leave to file her notice of appeal from the

district court's January 12, 2021 order out-of-time based upon on a finding of excusable neglect. Pet. App. 5–8. The Ninth Circuit lifted its stay order on June 21, 2021 to permit Petitioner's appeal from the district court's January 12, 2021 post-judgment order. Pet. App. 3–4.<sup>6</sup> In her appeal, the majority of Petitioner's arguments sought relief from the district court's prior post-judgment orders, rather than the district court's January 12, 2021 denial of her post-judgment motion for "DNA/HIV" testing. On December 21, 2021, the Ninth Circuit affirmed the district court's denial of Petitioner's post-judgment motion for DNA/HIV testing. Pet. App. 1–2. The Ninth Circuit found that the district court did not abuse its discretion in denying the post-judgment motion because the motion was filed more than one year after the district court's entry of summary judgment. *Id.* (citing FED. R. CIV. P. 60(c)(1)). The Ninth Circuit refused to consider Petitioner's arguments regarding the district court's previous denials of her prior post-judgment motions because Petitioner failed to file a timely Notice of Appeal of any of those post-judgment orders. Pet. App. 1–2 (citing FED. R. APP. P. 4(a)(1)(A)). The Ninth Circuit denied Petitioner's subsequent request for a panel rehearing and petition for a rehearing *en banc* on March 30, 2022. Pet. App. 9.

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<sup>6</sup> Petitioner appears to contend that the district court's grant of leave to file her February 10, 2021 Notice of Appeal out-of-time applied to all previous rulings and orders from the district court and the courts in the previous proceedings. If so, this contention is meritless. Pet. App. 2.



### **III. REASONS THE PETITION SHOULD BE DENIED**

#### **A. No Compelling Reason Exists To Warrant This Court's Discretionary Review.**

This case does not involve any question of law or any other federal procedure issue presenting an important legal principle for this Court's review. Petitioner identifies no aspect of the Ninth Circuit's ruling that conflicts with any decisions of this Court or with any decisions from other United States Courts of Appeal. Nor does Petitioner suggest that this case presents an unsettled area of federal law. Petitioner provides no legal basis—and Respondent is unaware of any—for her claim that the district court abused its discretion by declining to order a third party to make an allegedly “preserved” human tissue sample available for testing in a civil lawsuit that had been closed for almost five years. Instead, Petitioner merely regurgitates baseless theories and specious arguments as support for her improper requests to this Court that it reconsider nearly every substantive factual and procedural ruling in the proceedings before the district court. These arguments have been universally and repeatedly rejected by each court to consider them. The lower courts' rulings are correct in all respects, and the Petition should be denied.

**B. Petitioner Failed To Present Or Preserve Her Claims For Review.**

The sole issue before this Court is whether the Ninth Circuit’s affirmance of the district court’s denial of Petitioner’s post-judgment motion for “DNA/HIV” testing creates a question of law or fact requiring review by this Court. It does not. The Ninth Circuit correctly construed Morrison’s post-judgment motion for “DNA/HIV” testing as an untimely motion for relief from judgment under Federal Rule of Civil Procedure 60 that was filed almost five years after the district court’s entry of summary judgment in October 2016. *See* Pet. App. 1–2 (citing FED. R. CIV. P. 60(c)(1) and *Nevitt v. United States*, 886 F.2d 1187, 1188 (9th Cir. 1989) (motion for relief from judgment based on newly discovered evidence must be made within one year after judgment was entered)). The Ninth Circuit also correctly refused to address Morrison’s contentions regarding the district court’s denial of her other prior post-judgment motions because Morrison failed to file a timely notice of appeal within thirty days of the denials of those post-judgment orders. *See* Pet. App. 1–2 (citing FED. R. APP. P. 4(a)(1)(A) (notice of appeal must be filed within 30 days from judgment)).

Although not included in Petitioner’s Questions Presented, and therefore not properly before this Court, Sup. Ct. R. 14.1(a), the gravamen of the Petition is not that the Ninth Circuit’s denial of Petitioner’s post-judgment motion for “DNA/HIV” testing

was incorrect.<sup>7</sup> Instead, Petitioner contends throughout her Petition that the district court’s entry of summary judgment on her claims (entered more than five years ago) should be reversed and that she should have prevailed on the merits of her state law claims below. (Pet., pp. 15, 19). These issues have all been decided against Petitioner in the previous proceedings, and exhausted on appeal, and are not properly before this Court. *Browder v. Director, Dep’t of Corr. of Illinois*, 434 U.S. 257, 263 n.7 (1978) (appeal from an order denying a Rule 60(b) motion brings up for review only the denial of the motion and not the merits of the underlying judgment).<sup>8</sup> The Petition should be denied.

**C. Petitioner Makes Repeated Misstatements Of The Proceedings, The Facts, And The Summary Judgment Record.**

Petitioner’s contentions throughout the Petition are based on gross factual misrepresentations and

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<sup>7</sup> Pursuant to Supreme Court Rule 14.1(a), “[a] petition for a writ of certiorari shall contain . . . [t]he questions presented for review, expressed concisely in relation to the circumstances of the case. . . .” Respondents objects to Petitioner’s “Questions Presented” because, *inter alia*, the questions of the Fourth Amendment, the Administrative Procedures Act, the Due Process Clause, and the “Innocence Protection Act” as well as the “Exclusionary Rule” fail to conform to the holdings of the appellate court or the district court. Pet. App. 1–2; *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-PAL, Dkt. No. 335.

<sup>8</sup> The district court properly granted summary judgment on the merits of each of Petitioner’s claims because she failed to present any competent evidence to support her factual allegations or claims. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

mischaracterizations of the proceedings below, the legal bases for decisions by the district court and the Ninth Circuit, and the summary judgment evidentiary record. This alone is sufficient to deny the Petition. Sup. Ct. R. 14.4. Respondents therefore file this opposition primarily due to their obligations under Sup. Ct. R. 15.2. Given the sheer volume of these misstatements in Petitioner's Petition, it would be impractical, if not impossible, to list Petitioner's misstatements in their entirety. Pursuant to Rule 15.2, Respondents identify the following significant examples of misstatements of facts and law in the Petition.

### **1. Summary Judgment Findings By The District Court**

Petitioner fails to reference the underlying prior proceedings in this closed case, including the district court's October 24, 2016 order granting summary judgment and dismissing her claims with prejudice that was affirmed in a previous appeal. (Pet., pp. 24–25). Petitioner baldly contends, “[t]his case has been very active since 2014, and throughout the Covid-19 pandemic. All parties have filed documents with the permission of the lower courts and this case has not been dismissed with or without prejudice.” (Pet., p. 22). Petitioner's statements are directly contrary to statements by the district court in its October 24, 2016 order granting summary judgment on each of Petitioner's claims. *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-PAL, 2016 U.S. Dist. LEXIS 147464 (D. Nev. Oct. 24, 2016). Petitioner's express

misstatements of the proceedings before the district court include:

- “[T]his case was timely filed within the statute of limitations on Jul[y] 24, 2014.” (Pet., p. 10);<sup>9</sup>
- “Petitioner has always presented competent evidence to support her factual allegations and claims and all issues were raised throughout this case.” (Pet., p. 16);
- “Each claim has been met.” (Pet., p. 23);
- “No evidence, in any form, has been presented to sustain QUEST’S efficacy in 1996 testing.” (Pet., p. 23);
- “QUEST has failed to present any competent evidence to support the test used on TOMMY [Morrison] was ever FDA approved for antibodies, nor infection, specifically and solely related to the Human Immunodeficiency Virus (HIV).” (Pet., pp. 6–7); and
- Petitioner has personal knowledge of the fight cancellation, media reporting, and claims of

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<sup>9</sup> *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-PAL, 2016 U.S. Dist. LEXIS 147464, at \*16–17 (D. Nev. Oct. 24, 2016) (“Therefore, all of Plaintiff’s claims are time-barred by the applicable statutes of limitations, and must be dismissed with prejudice by this Court. In the alternative, the Court also finds that, on the undisputed facts, all of Plaintiff’s claims fail on the merits.”).

Tommy Morrison failing his HIV test in 1996. (Pet., p. 16).<sup>10</sup>

## **2. Evidence Regarding Quest Diagnostics's HIV-1 Antibody Testing and Tommy Morrison's HIV Status**

Although also not properly before this Court, each of Petitioner's contentions regarding (1) the clinical laboratory standards of care for HIV antibody testing; (2) Quest Diagnostics's laboratory testing and procedures; (3) Tommy Morrison's medical history and condition; and (4) alleged electron microscopy testing (referred to as "pathology reports") of Tommy Morrison's blood samples are misstatements directly contrary to the undisputed evidence in the summary judgment record. *See Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-PAL, 2016 U.S. Dist. LEXIS 147464 (D. Nev. Oct. 24, 2016). Egregious examples of Petitioner's misrepresentations of the facts in the summary judgment record and presented to the district court include:

- "Quest Diagnostics's Testing On TOMMY [Morrison] Was Not Regulated By The FDA And Was Not The Standard Of Care For HIV Testing In 1996." (Pet., p. 4);

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<sup>10</sup> *Id.* at \*7 ("Ms. Morrison has no first-hand knowledge of events that occurred in Mr. Morrison's life prior to 2009.").

- “QUEST’S test and results did not meet the standard of care for HIV testing in 1996.” (Pet., p. 19);<sup>11</sup>
- “[N]o retrovirus has been found in TOMMY. (Retrovirus is the scientific term for the HIV virus.)” (Pet., p. 4);<sup>12</sup>
- “The last test result is Sep. 17, 2013—the post-mortem pathology report proving QUEST’S test and reporting was faulty and inaccurate. . . .” (Pet., p. 10);
- The postmortem and antemortem reports demonstrated Tommy Morrison was negative for HIV and these reports have been on the record since the inception of this case. (Pet., pp. 10–12);<sup>13</sup>

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<sup>11</sup> *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-PAL, 2016 U.S. Dist. LEXIS 147464, at \*19–20 (D. Nev. Oct. 24, 2016) (“As to Quest, its testing of Mr. Morrison’s blood sample in 1996 met the clinical laboratory standard of care in HIV-1 antibody testing in 1996, and no evidence has been presented to controvert the accuracy of the results. . . . To the extent Plaintiff is challenging Quest’s methodology for testing Mr. Morrison’s blood, Quest Diagnostics complied with the standard of care for clinical laboratory HIV testing in 1996, as the undisputed evidence demonstrates.”).

<sup>12</sup> *Id.* at \*6 (“On September 1, 2013 Tommy Morrison died. His discharge summary at the time of his death included a diagnosis of HIV.”).

<sup>13</sup> *Id.* (“Patricia Morrison alleges that, after Tommy Morrison’s death, electron microscopy revealed that he never had HIV. However, she has provided no evidence to support this allegation, and the uncontroverted evidence demonstrates that Mr. Morrison was repeatedly diagnosed with, and received treatment for, HIV, from 1996 through 2013.”).

- “Experts in the field of virology and microbiology have confirmed T[ommy] [Morrison] did not have the HIV virus, and did not have any AIDS diseases.” (Pet., p. 10); and
- “Evidence on the record shows several infectious disease specialists and physicians cleared TOMMY of HIV/AIDS. . . .” (Pet., p. 5).

### 3. Alleged Misconduct by Parties and Counsel

Finally, Petitioner makes numerous demonstrably false statements regarding alleged misconduct by counsel and Quest Diagnostics. *E.g.*, (Pet., pp. 15, 16). Both the district court and the Ninth Circuit explicitly rejected Petitioner’s repeated character attacks and allegations of misconduct as wholly baseless.<sup>14</sup> These false statements include:

Respondents withheld hundreds of pages of medical records. (Pet., pp. 15, 16);<sup>15</sup> and

Respondents withheld exculpatory evidence, lied by omission, misrepresented the facts and law, and

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<sup>14</sup> *Morrison v. Quest Diagnostics, Inc.*, 698 F. App’x 350, 350–51 (9th Cir. 2017) (“We reject as meritless Morrison’s contentions that . . . defense counsel acted improperly.”).

<sup>15</sup> *Morrison v. Quest Diagnostics, Inc.*, No. 2:14-cv-01207-RFB-BNW, 2020 U.S. Dist. LEXIS 129997, at \*6 (D. Nev. July 16, 2020) (“Plaintiff identifies no basis for her assertion that Defendants have fraudulently concealed documents from her. The emails attached to Plaintiff’s *ex parte* motion indicate that Defendants provided all relevant medical records in their possession when discovery was previously conducted in this matter.”).



misled Judges and Justices involved in this case. (Pet., p. 16).

The pervasiveness of the misstatements in the Petition and Petitioner's lack of candor with this Court, standing alone, warrant denial of the Petition.

#### IV. CONCLUSION

There is no compelling reason to exercise this Court's discretionary review and the Petition for Writ of Certiorari should be denied.

Dated: May 23, 2022    Respectfully submitted,

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