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No. 21-1371

FILED

JUL 14 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

PATRICIA MORRISON,
Administratrix for THE ESTATE of TOMMY MORRISON,

Petitioner,

v.

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

Respondents.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

In light of this Court's pending case ***REED V. GOERTZ (21-442); United States v. Quest Diagnostics (Qui Tam); Request for Mandatory Judicial Notice of Adjudicative Facts – Fed.R.Evid. 201 – To Prevent Continuing Irreparable Harm; The Balance of Harms and Public Interest; The Public Need Answers To Three Questions Presented***, and pursuant to Rule 44.1, Petitioner Patricia MORRISON, Administratrix for the Estate of TOMMY MORRISON respectfully petitions for rehearing of denial of writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

As in *Reed*, the lower court in MORRISON'S case also ruled the *statute of limitations* on seeking DNA/HIV testing of evidence had run out.

In MORRISON, board certified experts in the field of virology and microbiology, scientifically conclude TOMMY did not have HIV, and did not die of AIDS.

However, Respondent QUEST continues to say **QUEST'S \$23 test used on TOMMY** in Las Vegas, Nevada, implicates TOMMY had HIV on February 10, 1996. QUEST'S unproven claim is causing continuing irreparable harm.

Even QUEST'S own 1996 CEO, Dr. Henry Soloway, of Quest Diagnostics, Las Vegas, Nevada, **debunks** Respondents' *continuing false statements* with reckless disregard for the truth.

"I conclude that Mr. Morrison was never infected with HIV virus."

Court Dkt: #136-1 p. 9:27-28.

Affidavit of Dr. Henry Soloway. CEO.

Quest Diagnostics, Las Vegas.

As in *Reed*, MORRISON has brought forward biological evidence belonging to TOMMY, which has not been tested for DNA/HIV, **specifically** so QUEST can be COURT ORDERED to replicate its QUEST 1996 \$23 test result.

QUEST'S 1996 test result, *Exhibit QDI-1*, is not authenticated; not signed off by a physician, in violation of 21 C.F.R. Part 11 and 21 C.F.R. Part 211; and contains multiple deficiencies such as TOMMY was 99 years old, *inter alia*.

What is worse, this case just uncovered (in 2022) QUEST'S 1996 \$23 test was **never approved by the FDA** to be marketed, used or sold by QUEST to even detect HIV or even author a laboratory report suggesting TOMMY'S blood, or anyone's blood was infected with HIV. QUEST intentionally hid and withheld this damning information for over 20 years.

QUEST has vehemently fought *against* MORRISON'S efforts to push for COURT ORDERED DNA/HIV testing by saying it is "*untimely*".

No party knew of the existence of TOMMY'S biological evidence until 2020.

As in *United States v. Quest Diagnostics* (Qui Tam) (2009), QUEST is using tests made in its own laboratory that are not supported by clinical trials. These tests are called *Laboratory Developed Tests* (LDT's), also known as "home-brew" tests. To this day in 2022, the FDA still does not approve QUEST'S LDT's.

This Court's recent denial of TOMMY'S writ of certiorari on June 23, 2022, does not lawfully, nor scientifically, change the scientific medical opinions and diagnoses of well-established, board certified, experts in the field of virology and microbiology whom authored TOMMY'S extensive *antemortem* and *postmortem* examination pathology reports confirming no evidence of HIV (in scientific terminology no "retroviruses") and no evidence of any AIDS diseases. These reports are authenticated and publicly available in Federal and Appellate Courts.

MORRISON has already won the fight for TOMMY'S HIV INNOCENCE.

The **ESTATE of TOMMY MORRISON** now seeks closure and the settlement owed for the *injury* traceable directly to that QUEST 1996 ***non-FDA-approved \$23 test***, resulting in the *immediate* cancellation of the boxing fight; *immediate* indefinite, worldwide, medical suspension from boxing; *immediate* cancellation of a multi-million-dollar fight contract to fight Mike Tyson; causing TOMMY'S life to spiral into despair; causing continuing irreparable harm to TOMMY'S name, career, reputation, Legacy, and now

his Estate, all on one day on February 10, 1996 in Las Vegas, Nevada, continuing to this day in 2022.

MORRISON'S request for COURT ORDERED DNA/HIV TESTING on TOMMY'S preserved/biological evidence to exonerate TOMMY on February 10, 1996, is what this petition is all about. Respondents do not want this to happen.

Damages are set at \$110 million dollars.

REASONS FOR GRANTING A REHEARING

The District Court reached a factually incorrect and legally flawed conclusion because Respondents intentionally withheld, with malice, exculpatory evidence until 2020, 2021 and 2022. QUEST'S 1996 test was *not-FDA-approved* to detect HIV and now the *real Boxing Licensing* rule of law was NAC 467.027 (1996) **not** mandating, **not** containing Legislative approval, for a search and seizure of blood to test for HIV to apply for a professional boxing license on February 10, 1996.

Respondents, which include State "actors" such as the Nevada State Athletic Commission, knew their unethical, continuing fraudulent misrepresentation of the facts and of the law since 1996 were being believed by the Judges, the media, and public at large.

But, aside from Respondents' intentional, malicious, deceit and deception recorded and memorialized in the court of law, *further* reasons exist for

GRANTING TOMMY'S rehearing and writ of certiorari, reversing, remanding, and scheduling for Trial by Jury.

1. IN LIGHT OF PENDING CASE: *REED V. GOERTZ* (21-442).

In *Reed*, now in *MORRISON*, this Court will determine whether the *statute of limitations* for DNA (DNA/HIV) testing starts after the state trial court denies testing or after litigation, including appeals, ends.

- In *Reed*, a lower court of appeals previously said REED waited too long to seek DNA testing.
- In *Morrison*, a lower court of appeals said MORRISON waited too long to seek DNA/HIV testing on TOMMY'S biological evidence.

This Court's decision in Mr. Reed's case could set a precedent for similar cases on the issue of DNA/genetic testing and could have broader implications for when litigants in *civil* and criminal cases nationwide will be allowed to bring new claims based upon arguments that new DNA evidence, or new DNA tests of old evidence, exonerates them.

Mr. Reed is on death row.

On February 10, 1996 TOMMY was also given a "death sentence" and placed on "death row" by a **QUEST test result** and told to "get his house in

order”, and “he could literally die before he got to his car.”

MORRISON moves this Court for an order to:

- GRANT MORRISON’S petition for rehearing.
- VACATE its order of June 23, 2022 denying writ of certiorari in light of *Reed v. Goertz*.
- GRANT writ of certiorari filed April 20, 2022.
- Schedule Oral Argument pending ***REED V. GOERTZ (21-442)***.

2. REQUEST FOR MANDATORY JUDICIAL NOTICE OF ADJUDICATIVE FACTS – Fed.R.Evid. 201 – TO PREVENT CONTINUING IRREPARABLE HARM.

Petitioner MORRISON, and others, face a “likelihood” of irreparable harm if this Court denies TOMMY’S petition for rehearing.

When assessing irreparable harm, this Court must “assum[e] the applicant’s position on the merits is correct.” *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1302 (2010) (Scalia, J., in chambers).

So here, the Court must assume judicial notice is needed to prevent the wrong being done.

GRANTING this petition for rehearing constitutes *exceptional circumstances* warranting this Court’s taking of additional documentary evidence, and

examination of the entire record, to assist in providing a complete picture of the procedural background for the present appeal.

NOTICE IS HEREBY GIVEN pursuant to Rule 201(a), (b), (d), (f). Judicial notice is *mandatory* if a party requests it and this Court is supplied with the necessary information. Judicial notice may be taken *at any stage* of a hearing, trial or other proceeding. Judicially noticed adjudicative facts in *civil* cases are conclusive. *Hollingsworth*, 558 U.S. at 190.

MORRISON requests this Court take judicial notice of the following necessary, “undisputed”, publicly available supporting documents, properly filed before the trial court to prevent continuing irreparable harm.

The *sources* provided cannot be reasonably questioned.

(i). FOR JUDICIAL NOTICE:

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

Source: Hon. Judge Richard F. Boulware II.

Dkt: #261 Court Hearing September 08, 2016.

Relevance: The decision by the Hon. Judge Boulware II supports MORRISON’S argument regarding the testing used by Respondents on TOMMY to deny him a boxing license.

(ii). FOR JUDICIAL NOTICE:

“I conclude that Mr. Morrison was never infected with HIV Virus.”

Source: Dr. Henry Soloway. 1996 CEO, Quest, Las Vegas.

Dkt: #136-1 p. 9:27-28.

Relevance: This opinion supports MORRISON’S argument that in 1996 TOMMY was not infected with HIV to deny him a boxing license.

(iii). FOR JUDICIAL NOTICE:

“Plaintiff now recognizes that neither the State Defendants nor the Quest Defendants ever diagnosed Mr. Morrison as carrying the HIV Virus. (CD #105-1, 10-15). Plaintiff additionally agrees with the Defendants that Mr. Morrison was never diagnosed with the human immunodeficiency virus in Las Vegas in February 1996 by any of the Defendants. (CD #105-1, 14:12-16 – Exhibit “G”, 334; 14-20) (“well it appears from this lawsuit that there was never a diagnosis . . .).”

Source: Nevada Attorney General Counsel: Viviane Rakowsky.

Dkt: #174 Filed June 08, 2016 Page 7 of 50.

Relevance: Respondents’ confessions are relevant to the issue TOMMY was never diagnosed with HIV to deny him a license to fight on February 10, 1996.

**MORRISON moves this Court for an order
to:**

- GRANT MORRISON'S petition for rehearing.
- VACATE its order of June 23, 2022 denying writ of certiorari in light of Request for Mandatory Judicial Notice of Adjudicative Facts – Fed.R.Evid. 201 – To Prevent Continuing Irreparable Harm.
- GRANT writ of certiorari filed April 20, 2022.

3. IN LIGHT OF UNITED STATES, DEPARTMENT OF JUSTICE (QUI TAM) V. QUEST DIAGNOSTICS.

<https://www.justice.gov/archive/usa/nye/pr/2009/2009apr15b.html>

QUEST entered a global settlement with the United States to resolve *civil* and criminal claims concerning various types of diagnostic test kits it manufactured, marketed, and sold to laboratories throughout the country from 1987 to 2006. QUEST plead guilty to a felony misbranding charge in violation of the *Food, Drug, and Cosmetic Act*, 21 U.S.C. §§ 301 *et seq.* QUEST'S tests provided elevated, inaccurate, unreliable results, committing healthcare fraud. Patients misdiagnosed with QUEST'S bad tests led to being administered unnecessary treatment, over treatment, and unnecessary surgeries.

Pursuant to this Court's Rule 44.2 this petition for rehearing presents intervening circumstances of a

substantial or controlling effect and to other substantial grounds not previously presented.

MORRISON now brings new information to this Court's attention.

TOMMY'S case is also ultimately about the health and safety of the American Public. Doctors determine the treatment of their patients based on QUEST'S test results, so accurate results are essential.

Inaccurate, *non-FDA-approved* QUEST tests/results puts the health of thousands, if not millions, of patients at risk.

Inaccurate *non-FDA-approved* QUEST HIV results is serious, irreversible, causes tremendous pain and stigma not only to the patient receiving the results but also to the patient's family.

Not only does QUEST knowingly continue to defraud the government by causing healthcare providers to bill Medicare for *non-FDA-approved* HIV tests, QUEST also causes Doctors to treat *inaccurately diagnosed* patients with medications that **do more harm**, than good.

This Court can lawfully make QUEST'S *continuing fraud* **STOP** by GRANTING this petition for rehearing and GRANTING COURT ORDERED DNA/HIV testing on TOMMY'S preserved biological evidence to scientifically verify if QUEST'S *non-FDA-approved* \$23 "HIV" test actually detects HIV.

Why would the reader of this petition not immediately recognize the **threat** to *non-HIV-patients* and not want to move swiftly to **protect** them?

MORRISON moves this Court for an order to:

- GRANT MORRISON'S petition for rehearing.
- VACATE its order of June 23, 2022 denying writ of certiorari in light of *United States v. Quest (Qui Tam)*.
- GRANT writ of certiorari filed April 20, 2022.
- Remand and reverse for Trial by Jury.

4. THE BALANCE OF HARMS AND PUBLIC INTEREST.

Consider just a few of the irreparable harms.

Respondents used media attention to control their false and misleading narrative and then through their deception and their exploitation controlled the lower courts, only aggravating the discerning public.

Respondents/Defendants Quest Diagnostics Inc.'s, Quest Employee John Hiatt's; State Defendants (*aka* state actors) Nevada State Athletic Commission's, Marc Ratner's and Dr. Margaret Goodman's narrative *then*, compared to the facts and their admissions and confessions *today*, is why TOMMY'S case is still of great interest.

Allowing mainstream and social media to exercise their powers of free speech, even temporarily, associating TOMMY with a diagnosis of a loathsome disease he never had, causes irreparable injury.

Media outlets that print or display on other forms of social media, (such as YouTube, Twitter, Facebook, Instagram), information contrary to the facts of this case is blackening the memory of a dead person, namely **Tommy Morrison**, with malice, causing irreparable harm.

Articles, and now books, too numerous to mention producing misleading, hearsay, discriminatory information on TOMMY falsely accusing him of having been diagnosed with HIV in 1996, and falsely accusing him of dying of AIDS in 2013, causes irreparable harm.

Vague bait and switch stories profiting off TOMMY'S tragedy, but never mentioning true facts such as his postmortem and antemortem reports showing no HIV; his tests showing no AIDS diseases; and Respondents' use of invalid, unconstitutional laws that cut TOMMY'S career, causes irreparable harm. The media continue to spin their stories to profit off TOMMY'S obviously planned demise.

To deny TOMMY'S petition for rehearing erodes confidence in the judicial system in the eyes of the public and deters from the truth being told.

The public at large, and worldwide, have gained interest in TOMMY'S Fight for Justice. TOMMY was

one of the most intriguing and misunderstood fighters of his time, and a *threat in the Ring* to Mike Tyson.

People who really knew TOMMY know of his acts of kindness and thoughtfulness outside of boxing. This case now in front of this Court **matters** to so many people of all ages and walks of life whom have come to genuinely care what the judicial system will do for the true story to be told about TOMMY'S life, reputation and legacy.

Whether you know him as: TOMMY “THE DUKE” MORRISON – Two Time Heavyweight Boxing Champion of the World; or TOMMY “GUNN” from the movie ROCKY V; or as the kid from Oklahoma, he was a human being whose memory must be protected, and his reputation not defamed.

This Court, GRANTING this petition, can deter a host of other “unanticipated and unfair consequences.” See *id.*; *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurral); *Purcell*, 549 U.S. at 4-5.

MORRISON moves this Court for an order to:

- GRANT MORRISON'S petition for rehearing.
- VACATE order of June 23, 2022 denying writ of certiorari.
- GRANT writ of certiorari filed April 20, 2022.
- Remand and reverse for Trial by Jury.

5. THE PUBLIC NEED ANSWERS TO THREE QUESTIONS PRESENTED.

The original certiorari petition asked this Court to resolve two issues of first impression. The public has a right to know the answers.

Questions Presented (1) and (3) should be granted:

QP (1). May a Petitioner from an Estate seek access to HIV/DNA testing on *newly discovered*, preserved, biological exculpatory evidence, belonging to decedent in a civil case – *and, if so, under what time limit circumstances*.

First, if this Court agreed to look at REED’s case to consider a conflict in lower court decisions over when the **statute of limitations** begins when a prisoner attempts to seek DNA tests on the crime scene evidence in their case – then this Court can agree to look at the high-profile case of celebrity TOMMY MORRISON – *aka* Tommy Gunn, from the movie Rocky V co-starring with Sylvester Stallone; *aka* Tommy “The Duke” Morrison – Two Time Heavyweight Boxing Champion of the World.

QP (3). Whether under the *Exclusionary Rule*, evidence collected or analyzed from an unlawful search and seizure of blood cannot be used in a **civil case** against the victim of illegal search and seizure.

Second, Respondent Nevada State Athletic Commission used an *ex post facto law* (NAC 467.027(3)(b)) (**1997**) to search and seize blood from TOMMY in 1996,

in violation of the Nevada Constitution Art.1, §10, cl.1 and Art.1, §9, cl.3. The rule of law in 1996 was NAC 467.027 (1996) which did not require the search and seizure of blood from TOMMY, or anyone, to obtain a professional boxing license. Respondents' actions are contrary to the spirit of the Fourth Amendment.

Finally, if the *Exclusionary Rule* applies in *civil* cases, as it should, QUEST'S \$23 test result from 1996 should be completely *excluded* from TOMMY'S case.

Question Presented (2) should be granted:

QP (2). Whether the courts' orders conform to the requirements at the time the injury took place: NAC 467.027 (1996); Fourth Amendment; the Administrative Procedures Act NAC 233B.010; 45 CFR §164.506(2)(i); and during this case, under Due Process Clause; Nevada Constitution Art.1, §10, cl.1 and Art.1, §9, cl.3; NRS 48.015; NRS 48.075; DNA Act 18 U.S.C. §3600(B)(ii); Innocence Protection Act Title 1.

The trial court committed *reversible error* non-conforming to the above applicable rules of law during this case, and not applying the appropriate rule of laws to the time the *injury* took place.

MORRISON moves this Court for an order to:

- GRANT MORRISON'S petition for rehearing.
- VACATE order of June 23, 2022 denying writ of certiorari.

- GRANT writ of certiorari filed April 20, 2022.
- Remand and reverse for Trial by Jury.

CONCLUSION

MORRISON prays that the ESTATE OF TOMMY MORRISON'S petition for rehearing and writ of certiorari are GRANTED.

Respectfully submitted,

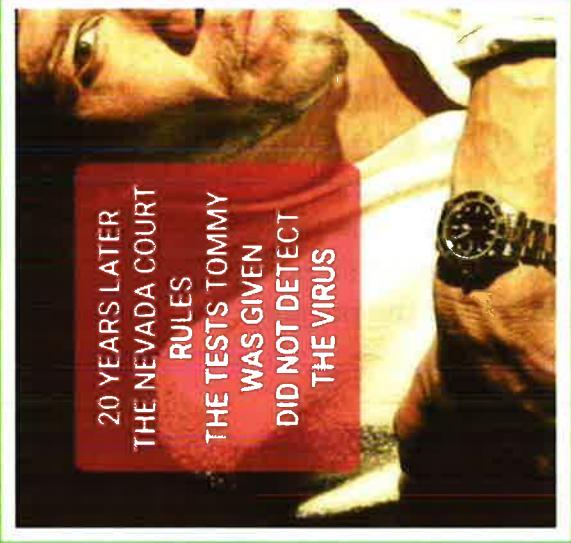
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Dated: July 14, 2022

**S. CT. R. 44 CERTIFICATION OF PARTY
UNREPRESENTED BY COUNSEL**

I hereby certify pursuant to S. Ct. R. 44 that this Petition for Rehearing is restricted to the grounds permitted by S. Ct. R. 44.2, as it is based on substantial grounds not previously presented, and is being submitted in good faith and is not being taken for the purpose of delay.

PATRICIA MORRISON
Petitioner, Pro Se



JUSTICE

HON DISTRICT
JUDGE
RICHARD F.
BOULWARE II

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

September 08th, 2016
Hon. Judge Richard F. Boulware II
Las Vegas, Nevada.
Case: Morrison v Quest et al

**Court
Document
Sep.08.2016**

QUEST CAUGHT

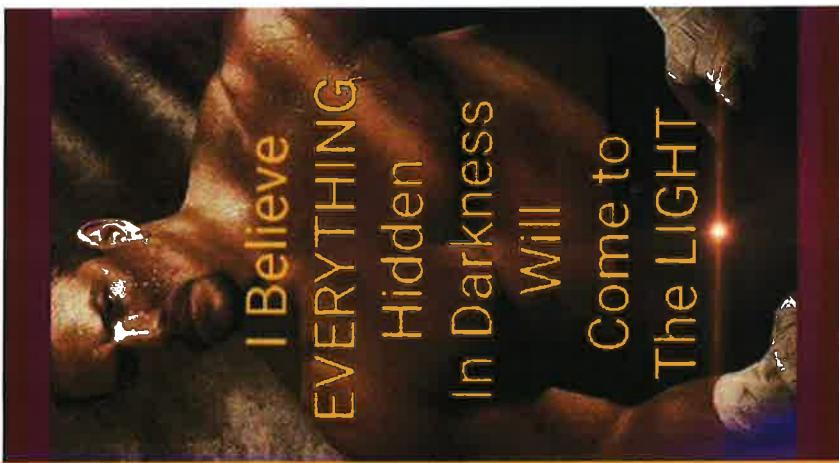


6

QUESTS testing was an "LDT" (Laboratory Developed Test) and LDTs were not regulated by the FDA in 1996 and not even today in 2022. No proof of efficacy of QUESTS 1996 LDT is available. QUEST was not operating under the FDA approved standard of care for HIV testing in Las Vegas, Nevada, in 1996 because LDTs are not FDA approved.

It is not the first time QUEST has withheld evidence from the Government, Courts, medical establishment and general public. The Department of Justice, ("DOJ") took the following similar case seriously, as should this Court in TOMMY'S civil case:

The DOJ settlement with QUEST *et al.*, in 2009 entered into a \$302 million-dollar-settlement to resolve a False Claims Act related to five home-brew, laboratory-developed tests, (LDTs) manufactured by QUEST *et al* that provided inaccurate and unreliable results, and confirmed QUEST did not follow proper procedures. QUEST *et al* were manufacturing, distributing, and using faulty home-made (LDT) Vitamin D tests for 8 years and physicians were prescribing unnecessary treatments to unsuspecting patients based on QUESTS faulty results. QUEST were found guilty of Felony misbranding charges in violation of the Food, Drug, and Cosmetic Act, ("FDA") 21 U.S.C. §§301 et seq. (See <https://www.justice.gov/opa/pr/quest-diagnostics-pay-us-302-million-resolve-allegations>).



using UNAPPROVED testing on TOMMY

QUEST DID NOT CONTTEST

Respondents knowingly misrepresented to TOMMY at the time, and continued, fraudulently misrepresenting the law and facts, to Petitioner and **all** the Judges and Justices in this case:

(1). That the Nevada Boxing Licensing law regulations in NAC 467.027(3)(b) (1997) were applicable to TOMMY in 1996, and in this case, *when they were not* passed or effective by the Legislature until 22 months later on December 02, 1997.

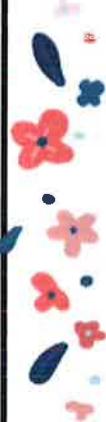
(2). That the search and seizure of TOMMY'S blood was approved by the Legislature in 1996, *when it was not* passed or effective by the Legislature until 22 months later on December 02, 1997.

(3). That QUEST testing used on TOMMY in 1996 was FDA Approved, *when it was not* FDA approved and was a laboratory developed test (LDT) using p.31 as markers of HIV when p.31 had been discontinued in FDA test kits in 1993.

(4). That the QUEST test was viewed as definitive proof of infection from the HIV virus *without any further testing* that would be required to rule out **autoimmune disorders** that make their own antibodies, and will trigger *false positives* even if the test had been FDA approved, *which it was not*.



to any of these uncovered
FACTS



**Additional material
from this filing is
available in the
Clerk's Office.**





Court Document

Case 2:14-cv-01207-RFB-PAL Document 174 Filed 06/03/13 Page 7 of 50

1 Plaintiff now recognizes that neither the State
2 Defendants nor the Quest Defendants ever diagnosed Mr. Morrison as carrying the **HRV**
3 Virus. (CD #105-1,10-13). Plaintiff additionally agrees with the Defendants that
4 Mr. Morrison was never diagnosed with the human immunodeficiency virus in Las Vegas
5 in February 1986 by any of the Defendants. (CD #105-1, 14-12-16); Exhibit "G", 334:14-
6 20 ("Well, it appears from this lawsuit that perhaps there was never a diagnosis...").
7

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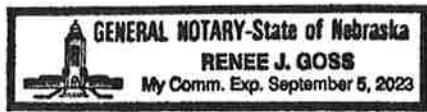
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DR. MARGARET GOODMAN, NEVADA STATE
ATHLETIC COMMISSION, and MARC RATNER,
Respondents.

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the PETITION FOR REHEARING in the above entitled case complies with the typeface requirement of Supreme Court Rule 33.1(b), being prepared in New Century Schoolbook 12 point for the text and 10 point for the footnotes, and this brief contains 2946 words, excluding the parts that are exempted by Supreme Court Rule 33.1(d), as needed.

Subscribed and sworn to before me this 14th day of July, 2022.
I am duly authorized under the laws of the State of Nebraska to administer oaths.



Renee J. Goss
Notary Public

Andrew H. Cockle
Affiant

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AFFIDAVIT OF SERVICE

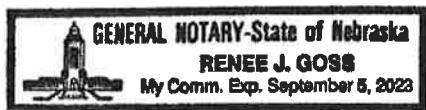
I, Andrew Cockle, of lawful age, being duly sworn, upon my oath state that I did, on the 14th day of July, 2022, send out from Omaha, NE 3 package(s) containing 3 copies of the PETITION FOR REHEARING in the above entitled case. All parties required to be served have been served by Priority Mail. Packages were plainly addressed to the following:

SEE ATTACHED

To be filed for:

PATRICIA MORRISON
Petitioner, Pro Se
Administratrix for the Estate of Tommy Morrison
P.O. Box 454
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Subscribed and sworn to before me this 14th day of July, 2022.
I am duly authorized under the laws of the State of Nebraska to administer oaths.



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