

No. _____

In the
Supreme Court of the United States

KENNETH JONES,

Petitioner,

v.

COUNTY OF SAN DIEGO, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The grant of orders, in favor of the Respondents' motions to dismiss, the District Court and the Appeals Court granted a dismissal of the above-entitled matter in favor of the Respondents in this civil action thereby creating the following questions:

1. Whether equitable tolling should apply in this case?
2. Whether there was a claim for race discrimination?
3. Were the actions of law enforcement excessive force?
4. Did the actions of law enforcement violate the civil rights of Mr. Jones?

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Kenneth Jones, an individual

Respondents and Defendants-Appellees below

- County of San Diego
- Alpine Sheriff's Department
- City of San Diego
- San Diego Police Department

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit
No. 22-55921

Kenneth Jones, *Plaintiff-Appellant*, v.
County of San Diego, a Government Entity;
Et Al., *Defendants-Appellees*

Final Opinion: November 28, 2023

U.S. District Court, Southern District Court
No. 20-cv-1989

Kenneth Jones, *Plaintiff*, v. County of San Diego, a
Government Entity, San Diego Police Department, a
Government Entity, City of San Diego, a Government
Entity, Alpine Sheriff's Department, a Government
Entity and Does 1 Through 50, Inclusive, *Defendants*.

Final Order: August 2, 2022

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PETITION FOR A WRIT OF CERTIORARI

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



OPINIONS BELOW

The Opinion of the U.S. Court of Appeals for the Ninth Circuit, is included at App.1a. The Order of the U.S. District Court for the Southern District of California is included at App.4a. These opinions and orders were not designated for publication.



JURISDICTION

The Ninth Circuit issued its final opinion on November 28, 2023. (App.1a). There was no appellate rehearing filed. By letter of the Clerk of Court dated February 29, 2024, Petitioner was given an additional 60 days to file this petition in the Rule 33.1 booklet form.

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



CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioner endured police brutality, disparate treatment and race discrimination thus involving Petitioner's constitutional claim that arises from Title VI of the Civil Rights Acts of 1964 ("Title VI"), as amended and codified as, 42 U.S.C. §2000d et seq. as well as 42 U.S.C. §1983 including equitable tolling of the statute of limitations pursuant to Cal. Code Civ. Proc. § 335.1.



STATEMENT OF THE CASE

This is a petition for a writ from an Order of Dismissal in favor of the Respondents equitable tolling and the dismissal of the race discrimination claim whereby eight (8) police officers and sheriff officers relentlessly beat Petitioner Kenneth until he could not stand and walk properly. The beating caused severe physical injuries to the Petitioner. In the instant matter, as discussed herein, Petitioner Kenneth seeks redress for the police brutality that he experienced in March 2018.

Subsequent to the brutality Petitioner Kenneth was incarcerated causing a delayed filing, yet, on October 8, 2020, Petitioner Kenneth filed a Complaint seeking the relief that he deserves by filing a Complaint that alleges: (1) racial discrimination; (2) negligence; (3) assault; (4) battery; (5) vicarious liability; (6) negligent infliction of emotional distress and (7)

intentional infliction of emotional distress. Respondents filed several motions to dismiss thereby requiring Petitioner to file three amended complaints; the last being filed by Petitioner as the Third Amended Complaint which was narrowed down to one claim of racial discrimination. On June 10, 2022, a minute order was issued on the Respondents' Motion to Dismiss. The minute order required supplemental briefing was required from both parties. The Honorable Gonzalo P. Curiel read and decided on the Respondents' Third Motion to Dismiss.

On August 02, 2022, the district court, in favor of the Respondents, granted the motion for dismissal as to the Petitioner's case. Thus, Petitioner sought an appeal with this Honorable Ninth Circuit Appeals Court who agreed with the district court's ordered dismissal of the case. Now, Petitioner comes before this High Court for redress for the common yet unchecked police brutality that permeates throughout this country, we call great.



REASONS FOR GRANTING THE PETITION

As states with the questions, equitable tolling and race discrimination are the two key issues with his case. Thus, Petitioner presents arguments to this Honorable High Supreme Court that his case is ripe for jury adjudication and the dismissals were unjustifiable in this case.

I. EQUITABLE TOLLING APPLIES IN THIS CASE

Petitioner Kenneth states that equitable tolling applies in this matter. Here, Petitioner Kenneth was incarcerated and during said incarceration Petitioner Kenneth suffered strokes thereby causing him to be disabled during incarceration. These two, coupled, issues demonstrate that the application of equitable tolling is proper for this case. Equitable tolling is “designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations-timely notice to the defendant of the plaintiff’s claims-has been satisfied.’ *Aguilera v. Heiman* (2009) 174 Cal.App.4th 590, 598. Moreover, “the equitable tolling doctrine rests on the concept that a plaintiff should not be barred by a statute of limitations unless the defendant would be unfairly prejudiced if the plaintiff were allowed to proceed. ‘the primary purpose of the statute of limitations is normally satisfied when the defendant receives timely notification...’” *Id.* California Courts, also, state “the effect of equitable tolling is that the limitations period stops running during the tolling event and begins to run again only when the tolling event has concluded. As a consequence, the tolled

interval, no matter when it took place, is tacked onto the end of the limitations period, thus extending the deadline for suit by the entire length of time during which the tolling event previously occurred.” *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370-371.

Most notably, the *Bunnell* Court states, “federal equitable tolling generally applies when a defendant’s misconduct interferes with a plaintiff’s filing of a lawsuit, or in special circumstances.” *Bunnell v. Department of Corrections*, (1998) 64 Cal. App. 4th 1360, 1373. Simply, the “application of the doctrine of equitable tolling requires timely notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff.” *Addison v. State* (Cal. 1978) 578 P.2d 941, 943-44. Moreover, “[t]he purpose of California’s equitable tolling doctrine ‘is to soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court.’” *Jones v. Blanas*, 393 F. 3d 918, 928 (9th Cir. 2004) (*Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1137 (9th Cir.2001) (en banc) (quoting *Addison v. State*, (1978) 578 P.2d 941, 942)). Herein, Petitioner Kenneth states that this case meets the requirements to justify a tolling of the statute of limitations.

First, Respondents had timely notice that this suit when the first complaint was filed with the Respondents in January 2019 which Respondents are well aware of in this case. Second, Petitioner Kenneth requests the extension of time through equitable tolling because said extension would ensure fundamental fairness between the parties by giving Petitioner Kenneth a fair chance for his case to be tried on the merits rather than being procedurally dismissed. Third,

Respondents will not be prejudiced with the continuation of this case especially because Defendant had sufficient notice that this case would be filed for this incident. Fourth, here Petitioner Kenneth was incarcerated from May 2018 to July 2020 thereby preventing the ability to fervently pursue his claims so if tolling is substantiated for even six months or one year after his release; Petitioner Kenneth filed within time fame of both windows because Kenneth immediately filed the Complaint “reasonably and good faith conduct on the part of the plaintiff.” *Addison v. State* (1978) 578 P.2d 941, 943-44.

Notably, “[t]he purpose of California’s equitable tolling doctrine “is to soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court.” *Jones v. Blanas*, (2004) 393 F. 3d 918, 928 (*Daviton v. Columbia/HCA Healthcare Corp.* (9th Cir. 2001) 241 F.3d 1131, 1137 (en banc) (quoting *Addison v. State*, (1978) 578 P.2d 941, 942). Herein, Petitioner Kenneth states that this case meets the requirements to justify a tolling of the statute of limitations. Most importantly, arguably Petitioner Kenneth had four years to file his complaint in court. Petitioner Kenneth incident occurred in March 2018. According to a recent case, Petitioner due to the race discrimination and injuries is entitled to four years of equitable tolling thus the Complaint was filed timely because of the equitable tolling of four (4) years. *Harris v. Quillen*, Case No. 1:17-cv-01370-DAD-SAB (PC) (E.D. Calif. May 27, 2021). The Harris Court asserted,

Federal courts also apply the forum state’s laws with respect to tolling of the statute of limitations insofar as state law is not incon-

sistent with federal law. Under California law, the statute of limitations is tolled for up to two years where the cause of action accrues while the plaintiff is in prison. As such, plaintiff had up to four years (the two-year limitations period plus the two-year statutory tolling due to plaintiff's incarceration) to file his § 1983 action in this court. [citation omitted].

Id (Jones v. Blanas, (2004) 393 F. 3d 918, 927 and referencing Cal. Civ. P. Code § 352.1). Here, Petitioner Kenneth had a race discrimination claim which gives a justifiable ability to file within four (4) years of the incident which would have been March 2021 to file his complaint. It is clear that Petitioner filed his complaint in October 2020 which was well above the statutory limits which support the issuance of equitable for the petitioner in this case. This case is very akin to the *Harris* Case.

Lastly, this Honorable Court states and asserts, “[h]owever, the district court erred in failing to apply equitable tolling. Equitable tolling under California law “operates independently of the literal wording of the Code of Civil Procedure’ to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness.” *Id.* (citing *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363). Petitioner Kenneth requests that this High Court considers all of these facts and factors above referenced to apply equitable tolling in an effort to ensure the fairness of this case. Petitioner Kenneth requests that this Honorable Court reverses the dismissal in this case.

II. THE RACE DISCRIMINATION CLAIM IS VIABLE

Petitioner Kenneth further asserts that the complaint satisfies the elements necessary to establish a *prima facie* case for the race discrimination claim. Here, this High Court has established “that a [claim] need not include such facts and instead must contain only “a short and plain statement of the claim showing that the pleader is entitled to relief....” *Swierkiewicz v. Sorema NA*, 534 U.S. 506, 508 (2002). Moreover, “the primary objective of the law is to obtain a determination of the merits of any claim; and that a case should be tried on the proofs rather than the pleadings.” *Rennie & Laughlin, Inc. v. Chrysler Corp.*, 242 F.2d 208, 213 (9th Cir. 1957). Here, “[a dismissal] cannot take the place of submission of evidence and findings of fact and conclusions of law.” *Id.*

Federal California Courts agree and state,

[A]fter *Iqbal*, “[a]llegations of Monell liability will be sufficient for purposes of Rule 12(b)(6) where they: (1) identify the challenged policy /custom; (2) explain how the policy/custom is deficient; (3) explain how the policy/custom caused the plaintiff harm; and (4) reflect how the policy/custom amounted to deliberate indifference, *i.e.* show how the deficiency involved was obvious and the constitutional injury was likely to occur.”

Koistra v. County of San Diego, Case No. 16-cv-2539-GPC (AGS) (S.D. Calif. 2017), Dkt. No. 44 (citing *Young v. City of Visalia*, 687 F. Supp. 2d 1155, 1163 (9th Cir. 2010)). Thus, these cases support the reversal of the dismissals in this case. In this case, Petitioner Kenneth that this case meets the requirements to prove

the *Monell* claim for race discrimination in this case. Petitioner Kenneth states two policies that were violated from Respondents own policy and procedure employment handbook stating policy 6.48 (excessive force). Petitioner Kenneth states that vagueness of the policy allows an unjustifiable custom whereby officers can use excessive force against minorities due race coupled with the stereotyping and racial profiling are outright deficiencies of said policies. Respondents wants to negate the fact that eight officers failed to have discriminatory motives when an all-Caucasian gang beat an elder African American.

Petitioner Kenneth states that there was no logical explanation that would prove a competent reason for eight officers to beat down an elderly compliant African American man. The only logical reason is Petitioner Kenneth's African American race. The entire arrest has several signs of discrimination as follows: eight officers appearing for an alleged car robbery is absurd especially when the result ended in a false arrest. Kenneth had marks, scars and severe injuries from the beating he endured with Respondents. Petitioner Kenneth has the required facts to plead the §1983 claim. Petitioner Kenneth quickly supplied a harrowing fact that Respondents' officers became a gang and beat Petitioner to a pulp. Thus, this act, alone, demonstrates the deficiency of the policies and procedures. The deficiency of excessive force regulation gives leeway to this type of brutality incident. Respondents' failure to use the proper force proves the violation the police brutality policy. Petitioner Kenneth states that the deficient policies gave Respondents the liberty to act against known policies by engaging in an eight (8) officers' gang style beating of Petitioner Kenneth

caused excruciating and irreparable harm to him. Furthermore, it was definitely obvious for Respondents County that the deficiencies with the policies and customs that excessive force caused constitutional injuries as herein when Petitioner Kenneth states that he was discriminated against due to his race which is definitely an unconstitutional injury.

It is known that the use of excessive force is definitely against policy, procedure and basic human rights. Thus, the facts coupled with the requirements to plead the violations are met in this case. Petitioner Kenneth has alleged the facts and provided evidence that Respondents are well known for race discrimination and excessive force. Petitioner Kenneth directly proffered news articles that state indicate that the Respondents engage in police brutality which leads to lawsuit and appeals such as this case. Respondents fail to take accountability for the race discrimination essentially to avoid accountability and responsibility for its insipid actions. Thus, Petitioner Kenneth asks that this Honorable High Court to reverse the Orders on granting a dismissal of this viable case.



CONCLUSION

For these foregoing reasons, Petitioner, Kenneth Jones respectfully submits that (1) the courts erred in granting motion to dismiss and (2) the Ninth Circuit and District Court err in granting the motion to dismiss against Petitioner Kenneth Jones who has valid claims against Respondents. Petitioner respectfully requests that this High Honorable Court reverses the dismissals and grant any further relief that this High and Honorable United States Supreme Court may deem just and proper.

Respectfully submitted,

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