IN THE SUPREME COURT OF THE UNITED STATES

JUAN MANUEL REYES, Petitioner, Pro Se, **V.** **COUNTY OF WASSHINGTON OREGON; et al.,** Defendants.	**9th CIRCUIT COURT OF APPEALS** **Case No. 22-36006** **DC no. 3:21-cv-00509-YY** **MOTION FOR REHEARING** **Fed. Sup. Ct. R.21**

MOTION FOR REHEARING

In accordance with rule 21, Petitioner *pro se*, humbly requests and move this Honorable Court for a rehearing of his petition for a writ of certiorari. Petitioner, was denied relief and case dismissed as "*frivolous*" by the 9th Circuit Court of Appeals. The Court's and Defendants' reliance on Oregon's statute of limitation time-barring Petitioner for failure to state a claim for which relief can be granted. Oregon Revised Statute (ORS) 12.110(1) provides: "An action for assault, battery, false imprisonment, or for any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years; provided, that in an action at law based upon fraud or deceit, *the limitation shall be deemed to commence only from the discovery of the fraud or deceit."* Both the 9th Circuit Court and Defendants contend that Petitioner was on "constructive notice" at the time of the constitutionally protected rights of the Fourth Amendment and under Oregon Article I § 9 of the constitution which provides the requirements and procedure to follow before executing their official authority. State officials and participating actors made their official authority and enforcement officers assured proper authority and judicial support, did not show at any time.

However, a rehearing will address a topic very common, violation of a citizen's Fourth Amendment protected right, in the State of Oregon of "physically removing" a person from their home after being accused and in the initiation stage of an alleged abuse investigation without any prior suspicion or probable cause to execute and invade with an exaggerated show of official force on the

sanctity of a family home. This injustice against Petitioner and thousands of other Oregon citizens deprived of their constitutional protections being physically and forcefully removed from their homes for an alleged abuse investigation conducted by Oregon Department of Human Services (ODHS), City of Beaverton Police Detective and other participating actors from CARES NW. Their actions constitute a complete disregard of citizens' constitutionally protected rights without any judicial support or legislative authority for their "*unreasonable* search and seizure of Petitioner's person, property, privacy and home."

The *Poffenberger* opinion specifically referred to imputed knowledge as constructive notice and held that type of notice "does not constitute the requisite knowledge within the meaning of the [discovery] rule." *Id.* at 681. This point has been reaffirmed in Maryland cases. *See, e.g.*, *Windesheim v. Larocca*, 443 Md. 312, 116 A.3d 954, 963 (2015) ("constructive notice is notice presumed as a matter of law. Unlike inquiry notice, constructive notice does not trigger the running of the statute of limitations under the discovery rule."). *See also Dominion Nat'l Bank v. Sundowner Joint Venture*, 50 Md.App. 145, 436 A.2d 501, 511 (1981) (" constructive notice (or knowledge) is a legal fiction; it is a useful and perhaps a necessary fiction, but it is a fiction nevertheless. It presumes as fact that which is not fact....").

Dan Dobbs, 1 *The Law of Torts, Practitioner Treatise Series* § 218, 554 (2001) (emphasis in original). **There are two aspects of the discovery accrual rule that warrant further attention**. ***First***, the limitations period begins to run as to each defendant when the plaintiff discovers, or a reasonable person should have discovered, that defendant's causal role. *See Adams v. Oregon State Police,* 289 Or. 233, 237-39, 611 P.2d 1153 (1980) (plaintiff knew towing company had found his car but claim against state did not accrue until later when plaintiff learned of state's causal role in the towing). When the facts that should alert a plaintiff to a defendant's role are different for different defendants, the date of accrual may also be different as to each. As one court put it, "[C]laims based on two independent legal theories against two separate defendants can accrue at different times." *E-Fab, Inc. v. Accountants, Inc. Services,* 153 Cal.App.4th 1308 1323, 64 Cal.Rptr.3d 9 (2007) (citing *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal.4th 797, 802-03, 27 Cal.Rptr.3d 661, 110 P.3d 914 (2005)).

Second, when a duty to investigate exists, the statute of limitations only begins to run if the investigation would have disclosed the necessary facts. *Greene v. Legacy Emanuel Hospital,* 335 Or. 115, 123, 60 P.3d 535 (2002) ("The [344 Or. 293] period of limitations * * * commences from the earlier of two possible events: (1) the date of the plaintiff's actual discovery of injury; or (2) the date when a person exercising reasonable care should have discovered the injury, *including learning facts*

that an inquiry would have disclosed.") (original emphases omitted; emphasis [181 P.3d 764] added). *See also* Dobbs, 1 *The Law of Torts* § 218 (statute will not begin to run until there is "enough chance that defendant was connected with the injury to require further investigation *that in turn would have revealed the defendant's connection*") (emphasis added).

In this case, the Court of Appeals put its own gloss on the discovery rule and concluded that, *as a matter of law,* (1) a reasonable plaintiff who knows that he or she has been injured and knows the physical cause of the injury would investigate the possible existence of an additional defendant that may have caused the injury "by seeking advice in the medical and legal community"; and (2) the limitations period commences when that duty to investigate arises. *T.R.,* 205 Or.App. at 142-43, 133 P.3d 353.

There are three problems with that reasoning. ***First***, as we have explained, the discovery rule recognizes that the existence of one type of wrongdoing does not necessarily disclose tortious conduct of a different sort, by a different tortfeasor. A plaintiff who knows that one defendant has caused him or her harm does not necessarily know that another defendant has done so in a different way. Depending on the facts of the particular case, a reasonable person who knows the identity of the tortfeasor who was the immediate physical cause of his or her injury may or may not be alerted to the possible existence of other tortfeasors.

Second, a plaintiff who is alerted to the need for further investigation only is required to conduct an investigation that a reasonable person in his or her circumstances would conduct. *See Doe v. American Red Cross,* 322 Or. 502, 511-13, 910 P.2d 364 (1996) (discovery is determined by objective, reasonable person standard). A plaintiff is not necessarily charged with employing experts to uncover facts that a reasonable person in plaintiff's circumstances could not uncover. [344 Or. 294]

Third, the Court of Appeals decided that the statute of limitations began to run because plaintiff had a duty to investigate. *T.R.,* 205 Or.App. at 142-43, 133 P.3d 353. That is not so, however, unless an investigation would have disclosed the necessary facts. The party who asserts the statute of limitations defense must prove that an investigation would have disclosed those facts. *See Doe,* 322 Or. at 514-15, 910 P.2d 364 (party who asserts limitations defense must prove the facts investigation would disclose). The Court of Appeals failed to consider that aspect of the discovery rule, and erroneously concluded that the duty to investigate alone was sufficient to commence the running of the statute of limitations. T.R. v. Boy Scouts of America, 181 P.3d 758, 344 Or. 282 (Or. 2008).

LOCAL RULE 7-1 CERTIFICATION

Petitioner, pro se, is not represented by counsel in these matters and is currently an adult in custody (AIC) of the Oregon's Department of Corrections (ODOC) at Easter Oregon Correctional Institute (EOCI) in the City of Pendleton Oregon. Petitioner is also proceeding *in forma pauperis* under Rule 39 and subject to the requirements under Rule 12.2.

RULE 20(1) Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. §1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

The "exceptional circumstances and situation" by which this Honorable Court can, with their power of discretion, grant a rehearing and relief for which a petition for a writ of certiorari was submitted. Petitioner beliefs that this case is an "*exceptional circumstance*" that "*warrant the exercise of the Court's discretionary powers*" apply herein as provided under RULE 44. A rehearing can granted by this Honorable Court to provide relief and vindication from the State of Oregon's officials' violation of a citizen's constitutionally protected Fourth, Fifth, and Fourteenth Amendment rights from unreasonable search and seizure of his person, property, privacy and home. There is no Oregon statutory provision that authorizes any State official and participating actors to physically remove any citizen from their home and deprive them of their constitutionally protected right and to reenter their own home. This is not other case that can justify their actions against a U.S. Marine Corps veteran, U.S. citizen and Oregon 25-year resident.

United States Constitution, ***Article VI, part 2***, states that, "***This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . ., shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,*** *any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.*"

Petitioner contends that his Fourth, Fifth and Fourteenth Amendments to the United States Constitution were severely violated and deprived him of his constitutionally protected rights guaranteed to all United States Citizens. "*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*"

CERTIFICATION

"I, PETITIONER PRO SE, HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE, BELIEF AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS ALSO SUBJECT TO PENALTY FOR PERJURY."

Petitioner submits this motion in the best interest of justice, vindication of constitutional violations, information is provided in good faith and not for any delay of due process.

Wherefore, Petitioner pro se, humbly and strenuously pray for this Honorable Court to grant a rehearing and relief as requested herein in the best interest of justice and any other relief this Honorable Court may deem appropriate or just.

Dated January 24, 2024.

Respectfully submitted by,

JUAN MANUEL REYES, Pro Se
SID# 21302533
Eastern Oregon Correctional Institution (EOCI)
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CERTIFICATE OF SERVICE

Required by RULE 29, United States Supreme Court Rules.

9th Circuit Case No. 22-36006

District Court Case No. 3:21-cv-00509-YY

Case Name: Juan Manuel Reyes v. County of Washington, Oregon; et al.,

Plaintiff certify that on January 24, 2024 Defendants have been served, via prepaid postage through the United States Postal Service, first-class mail, a true and correct copy of each document listed below to Defendants' counsel listed in this case. A copy of such notice shall be served as required by Rule 29 on all parties to the proceeding below.

Documents: Motion for Rehearing under U.S. Supreme Court Rule 21.

Defendants served:

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Dated: January 24, 2024.

Signature

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