

Case No. 23-6819

In The Supreme Court for the United States for America

In re: MARY ALICE NELSON ROGERS TRUST
Mary Alice Nelson-Rogers;

Petitioner,

v.

United States District Court For the Eastern District of California,
Sacramento

Respondent,

Supreme Court, U.S.
FILED

MAY 15 2024

OFFICE OF THE CLERK

On Petition for Writ of Mandamus to the United States
District Court For the Eastern District of California,
Sacramento

Case No. 2:21-cv-02151-JAM-KJR

Case No. 22-15469

Honorable District Judge John A. Mendez
Honorable Kenneth J. Newman, Magistrate Judge

Petition for Rehearing re: Writ of Mandamus

Mary Alice Nelson-Rogers, Muskogee Seminole Creek American
Indian Grantor Trustee of the Mary Alice Nelson-Rogers Trust,
Rural Free Delivery: 2072 50th Avenue, Sacramento, California
(nation-state) [00000]. Without the U.S.

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SUPREME COURT, U.S.

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, Mary Alice Nelson-Rogers Grantor Trustee of the Mary Alice Nelson-Rogers Trust respectfully petitions for rehearing of the Court's per curiam decision issued on April 22, 2024; 23-6819 In Re: Mary Alice Nelson-Rogers, et al (2024). Petitioner Nelson-Rogers moves this Court to grant this petition for rehearing and consider his case with merits briefing and oral argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision in this case.

REASONS FOR GRANTING THE PETITION

Since the passage of the Bill of Rights and the Organic Constitution for these united states for America many amendments have been made, especially to involuntary servitude and peonage and an individual's constitutional protected right to property, the right to be secured on their property, the right to be justly compensated for seizure of that property so that an individual can fulfill life liberty and the pursuit of happiness. There is constitutional issue here. I, Mary Alice Nelson-Rogers, of 78 years of age, an elderly woman, regarding my quiet title action filed in California's Superior Court in Sacramento, made it very clear that the jurisdiction was right based off of Article XI of the California Constitution. Moreover, in the Bill of Rights, federal courts' powers are given ONLY through the Constitution, but due process throughout these proceedings have failed which resulted in seizure of real and personal property, threats of involuntary peonage, no just compensation for the seizure and unduly excessive force leaving me unsafe on my property.

For example, the First Amendment has a section where the people have the right to ask the government to fix problems. The Fourth Amendment bars the government from unreasonable search

and seizure of an individual or their private property. A person cannot have property taken away without just compensation. People have the right against and cannot be imprisoned without due process of law (fair procedures and trials). Even though this is not per se a criminal proceeding, I, Mary Alice Nelson-Rogers, of 78 years, and land owner of real estate of record for 49 years, have been treated nothing short of a criminal, as I was physically removed from my home by 40 plus Sacramento County Civil Bureau Sheriffs and City Police and threatened with arrest if I did not leave and have not been compensated. I, Mary Alice Nelson-Rogers, have homeowner insurance, and land title insurance, which states in Schedule A that I am the OWNER WITH INTEREST IN THE LAND. The Seventh Amendment extends the right to Jury Trial in Federal Cases. I was denied that right to a trial, as the Magistrates Findings and Recommendations and the Judge's Order adopting the F&R, stopped any possibility for discovery and that trial. The Ninth Amendment states that listing specific rights in the Constitution does not mean that people do not have other rights that have not been spelled out. This is the most important Amendment, that anything that is not "spelled out" comes in contrast to the purpose of why these Bill of Rights were created, and would be considered an act that infringes against the people's constitutional protected rights. The Tenth Amendment says that the Federal Government only has those powers delegated in the Constitution. If it isn't listed, it belongs to the states or to the people. Now this is vital to what the magistrate, judge, and justices have done in these proceedings, and that was acted outside there scope of powers and personally chose to ignore the facts and evidence presented by me, or not even look at my pleadings and evidence so that I would not have an opportunity to get to discovery and a trial. A quiet title action to my understanding is a

complaint to invite any party in to a court proceeding regarding real property. The parties known were the defendants of record. No other party, federal government, state government, officials, county or city enjoined themselves to lay claim as having interest in said title of record. So with that being said, if there is a dispute on title and who has full rights to title, the Sacramento County Records, the State Records, and the evidence presented throughout this matter since 2021 clearly shows that I, Mary Alice Nelson-Rogers have been on this land in peaceful possession since 1975 October, and did transfer by gift as grantor trustee to the Mary Alice Nelson Rogers Trust in January 2020.

Moreover, by federal and state statute, rules of civil procedure, rules of court, counsel for defendants removed this case from state citing claims that I never made in the heading. Jurisdiction was clearly made in the action in State Court as Line 2-7; pg 3. Petitioner states, "the Jurisdiction over this matter also is pursuant to the California Constitution, Article XI, section 10 and California Code of Civil Procedure ("CCCP") section 410.10 because Respondents transacted business and committed the acts complained of herein in California, specifically in the County of Sacramento. The violations of law alleged herein were committed in Sacramento County and elsewhere within the State of California."

In closing, IF federal jurisdiction was proper regarding this matter of title to land, counsel for defendants never stated any constitutional question to the court but only spoke of diversity, amount exceeding 75,000 dollars, a foreclosure from a home mortgage loan, that JPMorgan Chase Bank, and Washington Mutual never provided and never showed proof as evidence in to the court at any time during these proceedings since 2021. The only evidence provided

by counsel was an assignment through FDIC that has not been verified by one representative from these banks.

Whereas, if the constitution is still relevant and [a]live, my Bill of Rights would not have been stopped at every turn, and due process would have prevailed. You Supreme Court Justices have the opportunity to assist an elderly in preserving her protected rights not by handout, but by precedent, the Bill of Rights, the Constitution now codified through regulations to stop piracy, involuntary servitude and peonage, and corruption within our agencies who have taken oaths to protect and be servant to the true people by definition in America. "Fraud in its common law sense of deceit – and this is one of the meanings that fraud bears in the statute, see *United States vs. Dial*, 757 F.2d, 163, 168 (7th Cir. 1985) – includes the concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them, he is guilty of fraud." *McNally vs. United States*, 483 U.S., 350 (1987).

Black's Law Dictionary 6th Edition: A **fiduciary duty** is the highest standard of care at either equity or law. A fiduciary (abbreviation *fid*) is expected to be extremely loyal to the person to whom he owes the duty (the "principal"): such that there must be no conflict of duty between fiduciary and principal, and the fiduciary must not profit from his position as a fiduciary (unless the principal consents). In English common law, the fiduciary relation is an important concept within a part of the legal system known as equity. In the United Kingdom, the Judicature Acts merged the courts of equity (historically based in England's Court of Chancery) with the courts of common law, and as a result the concept of fiduciary duty also became applicable in common law courts. When a fiduciary duty is imposed, equity requires a different, stricter, standard of behavior than the comparable tortious duty of care at common law. The fiduciary has a duty not to be in a situation where

personal interests and fiduciary duty conflict, not to be in a situation where his fiduciary duty conflicts with another fiduciary duty, and a duty not to profit from his fiduciary position without knowledge and consent. A fiduciary ideally would not have a conflict of interest. It has been said that fiduciaries must conduct themselves "at a level higher than that trodden by the crowd" and that "[t]he distinguishing or overriding duty of a fiduciary is the obligation of undivided loyalty"

Fiduciary Responsibility: "As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by the law on trustees relative to the making of personal financial gain from a discharge of their trusts. That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves, and owes a fiduciary duty to the public. It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual. Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken the public confidence and undermine the sense of security for individual rights is against public policy." (63C Am. Jur. 2d, Public Officers and Employees, 247).

"A public official is a fiduciary toward the public ... and if he deliberately conceals material information from them he is guilty of fraud." U.S. v. Holzer, 816 f.2d 304, 307 (7th Cir.1987)

"The rule in *Saunders v Vautier* (1841) 4 Beav 115 is a rule of equity which provides that, if all of the beneficiaries a trust are of adult age and under no disability, the beneficiaries may require the trustee to transfer the legal estate to them and thereby terminate the trust. The rule has been repeatedly affirmed in common law jurisdictions."

"Although the general rule is that 'one party to a transaction has no duty to

disclose material facts to the other,' and [sic] exception to this rule is made when the parties are in a fiduciary relationship with each other." Midland Nat. Bank, etc. v. Perranoski, 299 N.W.2d 404, 413 (Minn 1980). See, also, Callahan, 127 A.D.2d 198, 514 N.Y.S.2d 819 (1987). "When a relationship of trust and confidence exists, the fiduciary has the duty to disclose to the beneficiary of that trust all material facts, and failure to do so constitutes fraud." See 37 *24 C.J.S. Fraud§ 16d (1943).

Regarding the law of trusts and disclosure by a fiduciary, the courts have said:

"It is the duty of a trustee to fully inform the cestui que trust [beneficiary] of *all* facts relating to the subject matter of the trust which come to the knowledge of the trustee and which are a material to the cestui que trust to know for the protection of his interest." (Emphasis supplied.) Johnson v. Richards, 155 Neb. 552, 566-67, 52 N.W.2d 737, 746 (1952). See, also, St Paul Fire & Marine Ins. Co. v. Truesdell Distributing Corp., 207 Neb. 153, 296 N.W.2d 479 (1980)

Throughout the Uni.J. 438 86d States, public officers have been characterized as **530 fiduciaries and trustees, charged with honesty and fidelity in administration of their office and execution of their duties. See, Driscoll v. Burlington-Bristol Bridge Co., 86 A.2d 201 (1952); Marshall Impeachment Case, 363 Pa. 326, 69 A.2d 619 (1949), 398, 400 (1941).

In re Removal of Mesenbrink as Sheriff, 211 Minn. 114, 117, 300 N.W. (sheriff: "A public office is a public trust. Such offices are created for the benefit of the public, not for the benefit of the incumbent."

"Moreover, where one has duty to speak, but deliberately remains silent, his silence is equivalent to a false representation." See, Security St. Bk. of Howard Lake v. Dieltz, 408 N.W. 2d 186 (Minn.App.1987); Callahan v. Callahan, 127 A.D.2d 298, 514 N.Y.S.2d 819 (1987); Holcomb v Zinke, 365 N.W.2d 507 (N.D. 1985); Anderson v. Anderson, 620 S.W.2d 815 (Tex.Civ.App.1981); 37 C.J.S. Fraud § 16a (1943).

"Public officials occupy positions of public trust.... The duty imposed on a fiduciary embraces the obligation to render full and fair

disclosure to the beneficiary of all facts ***531 which materially affect his rights and interests." Plaquemines Par. Com'n Council v. Delta Dev., 502 So.2d 1034, 1039-40 (La.1987)

In this case, the un rebutted evidence presented in the state quiet title action in California Superior Court, Eastern District and Ninth Circuit Appellate Court established that in that title belongs to me in fee simple, owner with interest in the land, with Homestead, and lifetime estate through gift transfer to the Mary Alice Nelson Rogers Trust.

CONCLUSION

Mary-Alice respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

CERTIFICATION

Pursuant to Rule 44.2 This Petition for Rehearing is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay.

Date: May 10, 2024

By  a.p.r. L.S.

Mary Alice Nelson-Rogers, Grantor Trustee
of Mary Alice Nelson Rogers Trust
- True Owner with Interest in the land
- Under Reservation of Rights
- Signature by Personal Representative