

**NO. 23-7435**

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IN THE  
**IN THE SUPREME COURT OF THE UNITED STATES**

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**MARIETTE HARRIS**

Petitioner,

V.

**MILES W. ELLIS, et al.**

Respondents.

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On Petition for Writ of Certiorari to the

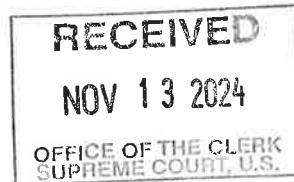
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**PETITION FOR REHEARING**

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P.O. Box 35  
Phenix City, Alabama 36867

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## **PETITION FOR REHEARING**

Pursuant to **Rule 44** of the Rules of the Supreme Court of the United States, Petitioner Marriette Harris respectfully petitions this Honorable Court for rehearing of this Court's October 7, 2024 Order denying her petition for a writ of certiorari. **This petition is filed in good faith and not for delay**, with the objective of addressing critical issues of constitutional law that were not previously resolved due to either an oversight or misunderstanding of material facts or law.

## **JURISDICTIONAL STATEMENT**

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial...effect." This Court has exclusive jurisdiction over this matter pursuant to **28 U.S.C. § 1257** wherein the lower Court erred in its application of the statute of limitations where the discovery rule or other tolling provisions are concerned.

### **1. STATEMENT OF THE CASE**

This petition arises from a medical malpractice lawsuit involving the administration of Ketorolac, a potent nonsteroidal anti-inflammatory drug (NSAID), by Jack Hughston Memorial Hospital. On November 11, 2019, I, the petitioner, presented to the hospital with chest pain, a symptom indicative of a possible heart attack.

Despite this, the medical staff misdiagnosed petitioner's condition as rib pain and administered Ketorolac, a drug known to have serious side effects, including an increased

risk of heart attacks in patients with pre-existing cardiac conditions. Within six days of receiving the injection, the petitioner suffered a pulmonary embolism and heart attack, leading to long-term health complications. The hospital's misdiagnosis, delayed treatment, and the improper administration of Ketorolac directly contributed to the petitioner's heart attack. The petitioner brought a lawsuit in the Circuit Court, asserting claims of medical malpractice, misdiagnosis, etc.

However, the respondents moved to dismiss the case, citing the statute of limitations under Alabama law.

The lower Courts ruled in favor of the respondents, failing to fully consider the application of the discovery rule under Alabama law, which tolls the statute of limitations until the injured party knows or should have known of the injury and its cause.

## **II. GROUNDS FOR REHEARING**

The Petitioner believes the Court's decision to deny Certiorari overlooked a critical legal principle essential to this case which deals with the statute of limitations being tolled because the nature of the petitioner's injury was not immediately discoverable as this Court ruled in Urie v. Thompson, 337 U.S. 163 (1949).

The Court's denial of certiorari leaves in place a ruling that misapplies the law regarding the statute of limitations and raises broader concerns about medical negligence, especially in cases involving the administration of potentially harmful medications like Ketorolac.

Rehearing is warranted for the following reasons:

### ***1. Misapplication of the Statute of Limitations***

The lower courts erred by dismissing the petitioner's claims on the grounds of the statute of limitations without fully considering the discovery rule under Alabama law. In Alabama, the statute of limitations for medical malpractice cases is two years pursuant to **Ala. Code § 6-5-482**, but it is tolled until the plaintiff discovers or reasonably should have discovered the injury and its cause.

Due to the hospital's misdiagnosis, the petitioner was unaware that the Ketorolac injection was the cause of her heart attack until much later, when she sought additional medical opinions. Only upon further medical investigation did it become clear that the Ketorolac injection was contraindicated for someone with the petitioner's symptoms. As a result, the statute of limitations should have been tolled under the discovery rule, making the lower court's dismissal improper.

## **2. The Impact of Covid 19's "Shelter in Place" orders delayed court filings**

Due to unprecedeted and extraordinary circumstances caused by the COVID-19 pandemic, the petitioner was halted from filing the medical malpractice lawsuit. The State-mandated "shelter in place" order in Alabama, issued in early 2020, significantly restricted movement, access to legal services, and the operation of courts, creating a substantial barrier to timely filing.

Under Alabama's "**shelter in place**" order, individuals, including this petitioner, were required to remain at home except for essential activities, i.e. hospital and doctor visits. This restricted the petitioner's ability to gather necessary information and prepare the case for filing. In addition, many court operations were either suspended or significantly reduced during this period, resulting in a backlog of cases and limited access to judicial resources.

Any delays in filings were directly caused by the pandemic's widespread disruption, which should be considered an extraordinary circumstance that warrants tolling the statute of limitations. Courts around the country, including in Alabama, have recognized the significant impact that COVID 19 had on litigants' ability to pursue legal remedies during the pandemic.

Therefore, the petitioner argues that the statute of limitations should be tolled under the doctrine of equitable tolling, giving the extraordinary and unavoidable obstacles presented by the pandemic.

Furthermore, federal and state courts have acknowledged that the **force majeure** nature of COVID-19, coupled with government orders, significantly hindered the ability to comply with statutory deadlines. As such, applying strict adherence to the statute of limitations in this context would be inequitable and unjust.

In light of these considerations, the petitioner respectfully requests the court to grant a rehearing.

### **3. Preventing Further Harm to Others**

Petitioner's case presents an opportunity to address a broader public health issue: the improper use of NSAIDs like Ketorolac in emergency medical settings without adequate diagnostic diligence. Ketorolac, as noted by the FDA and medical literature, poses serious risks to patients with cardiac conditions. The petitioner's heart attack was directly caused by the reckless administration of Ketorolac, despite presenting symptoms consistent with a heart attack.

### **4. Due Process Violation**

The denial of petitioner's claim on statute of limitations grounds without proper consideration of the discovery rule constitutes a violation of the petitioner's due process rights under the Fourteenth Amendment. Patients like this petitioner, who suffer harm due to medical negligence, should not be barred from seeking justice simply because they did not immediately understand the cause of their injury. In the case sub-judice, the failure to recognize the role of Ketorolac in causing petitioner's heart attack was not due to any fault of her own but rather the result of the hospital's misdiagnosis and delay in treatment.

## **5. Significant Implications For Public Health**

This case involves significant public health implications, as Ketorolac is widely used in hospitals and emergency departments across the country. Its potential to cause heart attacks in vulnerable patients is a matter of serious concern, and hospitals must be held accountable for properly diagnosing patients before administering such medications.

The Court should consider rehearing this case not only to correct the injustice in the petitioner's specific situation, but also to ensure that medical professionals nationwide are aware of the risks associated with Ketorolac and other similar medications. This case presents an opportunity to set a precedent that can prevent similar injuries from happening to other patients.

## **6. Application of the Discovery Rule in Medical Malpractice Cases**

The discovery rule is critical in medical malpractice cases because patients often do not realize they have been injured, or what caused their injury, until much later. In *Ex parte Sonnier*, 707 So. 2d 635 (Ala. 1997), the Alabama Supreme Court confirmed that the

Statute of limitations does not begin to run until the plaintiff is aware of both the injury and its cause.

In the case sub-judice, the petitioner could not have reasonably known that the Ketorolac injection was the cause of her heart attack until she obtained further medical opinions. The hospital failed to inform this petitioner of the risks associated with the medication, and only after conducting her own investigation did the petitioner learn of the connection between Ketorolac and her cardiac event. The lower court's failure to apply the discovery rule improperly barred the petitioner's claim.

### **III. CONCLUSION**

For the reasons set forth above, the Petitioner respectfully requests that this Honorable Court grant this Petition for Rehearing. The lower courts misapplied the statute of limitations without properly considering Alabama's discovery rule, which has profound implications not only for petitioner's personal case, but also for the future safety of patients who may suffer similar harm due to medical negligence. A rehearing will ensure that justice is served, and that the hospitals are held accountable for administering medications that carry serious risks.

Respectfully submitted,

This 7th day of November, 2024.

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to Supreme Court Rule 33.2, I hereby certify that this petition contains fewer than 3,000 words, excluding the parts of the petition that are exempted by Rule 33.1(d).

Respectfully submitted,

This 7<sup>th</sup> day of November, 2024.

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### **CERTIFICATE OF SERVICE**

I, Mariette Harris, hereby certify that on this 7<sup>th</sup> day of November, 2024, I caused a copy of the foregoing Petition for Rehearing to be served on counsel for the Respondents via first-class mail, adequate postage affixed thereto and addressed as follows:

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Respectfully submitted,

This 7<sup>th</sup> day of November, 2024.

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