No. 04-1190
IN THE
Supreme Court of the United States

John Melvin Alexander, *et al.*,
Petitioners,

v.

State of Oklahoma, *et al.*

Permission to File Amicus Curiae Brief

The Plaintiffs, John Melvin Alexander, *et al.*, give permission for the National Lawyers Guild, the National Conference of Black Lawyers, the Center for Constitutional Rights and the National Association for the Advancement of Colored People to file an amicus curiae brief in support of the position taken by the Petition for Certiorari.

Adjoa A. Aiyetoro, Esq. MO Bar #26971
National Coalition of Blacks for Reparations in America (N'COBRA)
P. O. Box 90604
Washington, DC 20090
501-324-9950

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

PETITION FOR A WRIT OF CERTIORARI

Charles J. Ogletree, Jr.
(Counsel of Record)
1575 Massachusetts Ave.
516 Hauser Hall
Cambridge, MA 02138
(617) 496-2054

Michael D. Hausfeld
Agnieszka M. Fryszman
Cohen Milstein Hausfeld &
Toll, P.L.L.C.
1100 New York Ave. NW
Suite 500, West Tower
Washington, DC 20005

Adjoa A. Aiyetoro
P.O. Box 90604
Washington, DC 20090

Michele A. Roberts
Akin Gump Strauss Hauer
& Feld, LLP
1333 New Hampshire Ave. NW
Washington, DC 20007

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QUESTIONS PRESENTED

1. When a district court determines whether a claim is equitably tolled on a motion for summary judgment, and thus on undisputed facts, is that ruling reviewed (i) for abuse of discretion (as the Tenth Circuit and five other circuits hold), or instead (ii) de novo (as six circuits hold)?

2. May a plaintiff's claim accrue under federal law despite the fact that she neither knew nor should have known of particular defendants' responsibility for her injury, as four circuits hold in conflict with four other circuits?

PARTIES TO THE PROCEEDING BELOW

In addition to the parties named in the caption, the following parties appeared below and are petitioners here: Juanita Delores Burnett Arnold; J. B. Bates; Essie Lee Johnson Beck; James D. Bell; Phines Bell; Frances Blackwell; Juanita Williams Blakely; Juanita Smith Booker; Kinney Booker; Dorothey Booker Boulding; Jeanette McNeal Bradshaw; Teresa Earlee Bridges Dysart; Johnnie L. Grayson Brown; Lee Ella Strozier Brown; Clarence Bruner; Lula Belle Lacy Bullock; Joe R. Burns; Rose L. Green Bynum; Muriel Mignon Lilly Cabell; Beatrice Campbell-Webster; James Dale Carter; Rosella Carter; Samuel Cassius; Naomi Hooker Chamberlain; Mildred Mitchell Christopher; Mildred Lucas Clark; Otis Granville Clark; Sandy Clark; Blanche Chatman Cole; Wordie "Peaches" Miller Cooper; Carrie Humphrey Cudjoe; Laverne Cooksey Davis; Dolly Mae Daufitt; James Durant; Lucille B. Buchanan Figures; Archie Jackson Franklin; Jimmie Lilly Franklin; Joan Hill Gambrel; Earnestine Gibbs; Harold Gibbs; Theressa Cornella McNeal Gilliam; Edward L. Givens; Bertha Guyton; Hazel Franklin Hackett; Mildred Johnson Hall; Nell Hamilton Hampton; Leroy Leon Hatcher; Madeline Haynes; Joyce Walker Hill; Robert Holloway; Dr. Olivia J. Hooker; Samuel J. Hooker, Jr.; Wilhelmina Guess Howell; Charles Hughes; Myrtle Wells Hurd; Vera Ingram; Eunice Cloman Jackson; Genevieve Elizabeth Tillman Jackson; Willie Bell White Jackson; Dr. Hobart Jarrett; Artie Lacy Johnson; Wilma Mitchell Johnson; Edward Earven Jones; Hazel Dolores Smith Jones; Julia Bonton Jones; Percy Jones; Thelma Thurman Knight; Leanna Johnson Lewis; Katie Mae Johnson Livingston; Alice Higgs Lollis; Roanna Henry McClure; Eldoris Mae Ector McCondichie; Carol Smitherman Martin; Mary Tacoma Maupin; Willie Musgrove Means; Ishmael S. Moran; Ruth Dean Nash; Simeon L. Neal; Almadge J. Newkirk; Myrtle Napier Oliver; Juanita Maxine Scott Parry; Ida Burns Patterson; Freddie Scott Payne; June Alexander Powdrill; Alice Presley; Delois Vaden Ramsey; Cora Hawkins Renfro; Simon R. Richardson; Jewel Smitherman Rogers; Gerlene Helen

Wright Sayles; Julius Warren Scott; William A. Scott; Tuleta S. Duncan Shawnee; Veneice Dunn Simms; Hal "Cornbread" Singer; Naomi Siplin; Beulah Loree Keenan Smith; Golden Williams Smith; Lola Sneed Snowden; James L. Steward; Dorothy Wilson Strickland; Sarah Tatum; Lois White Taylor; Willie Mae Shelburn Thompson; Effie Lee Spears Todd; Melvin C. Todd; Kathryn Mae Taylor Tolin; Bessie Mae Austin Vester; Queen Esther Love Walker; Samuel Walker; Troy Sidney Walker; Oscar Douglas Washington; Mary Leon Brown Watson; Allen Matthew White; Cecil White; Marie Whitehorn; Mildred Evitt Wilburn; Bertram C. Williams; Louie Barton Williams; William Harold Woods; Clotie Lewis Wright; Wess Young; Donna Adams; Johnetta Adams; Thomas Adams, Jr.; C. J. Alexander; George Alexander; Lillian Alexander; Brenda Nails Alford; Betty Anderson; Rhonda Anderson; Robert Earl Anderson; Irma Thomas Anthony; Leona Jerrye Bruner Anthony; Mary Bell Arrington; Arven Autry; Elmer Autry; James Autry; Otis Autry, Jr.; Ruth Ella Autry; Marguerite Bagby; John Bailey; Nicholas A. Banks; Edith McAlester Barnes; Leslie Beard; Raymond Beard, Sr.; Audele McCleod Beeks; R. G. Bell; Wilma Presley Bell; Simon Berry, Jr.; Rev. Bradford Bishop; Eugene Bolton; James Bolton; Oscar Boyd; Dorothy Williams Branlett; Dorothy Jackson Brewer; Patricia Dukes Brome; Naomi Lawson Brown; William Bruner; Brenda Fair Campbell; Henry Cannon; Nathaniel Cannon; Edwina Walker Carr; Bernard Carter; Eddie Hue Carter; Robert Carter, Jr.; Samuel Lee Carter; Elizabeth Cooley Chappelle; Anita Williams Christopher; Vassie Clark; Aileen Joanne Austin Coburn; Marilyn Kay Johnson Coley; Erline Crosslin; Bernice E. Banks Davis; Fred Davis; Roy Davis; Lawrence Herman Dennie; Evelyn Diggs; Robert Charles Dukes; Willie Dukes; Rita Duncan; Roger Duncan; Sylvia A. Dunn; Amy Gamble Eidson; Mary L. Emerson; Bill Ewing; Jo Ann Ewing; Robert Ewing; Janet Fair; Stanley Fair, Jr.; Wilbur Foster; Alfreda O. Dennie Franklin; John Hope Franklin; Jean Freeny; Thelma Kinlaw Germany; Margaret Jean Tilley Gibbs; Bobbye Louise Gilbert; Jeanne Osby Goodwin; Linda Edmondson Graves; Albert Grayson; Katherine Wood Hale; Le-

ontyne Thomas Harrell; Delores Harrington; Mary Priscilla Parker Harrison; Jeanette Hawkins; Olander Hawkins; Starla Hawkins; Jobie Elizabeth Holderness; Maybelline Presley Hooks; Juanita Alexander Hopkins; Sharon Hopkins; Emma Lockard Horn; Maximillian Howell; Mildred Wallace Huspeth; Helen Sipuel Huggins; Clarence Jackson; Della Shelton Jackson; Gail Jackson; Genieive Jackson; Rosie Lee Jackson; Sayyid Jami; Arthur Jefferson; Lula Mae Jefferson; Matthew Jefferson; Robert Jefferson; Geraldine Fair Jessie; Carolyn Price Johnson; Felicia McLeod Johnson; JoAnn Johnson; Ronald Wayne Johnson; Val Gene Johnson, Sr.; Dorothy Jones; Eva Mae Tilley Jones; Melvin "Tip" Jones; Mildren Presley Kavanaugh; Vernell Kelley; Beverly Nails Kelly; Lorell Kirk; Francine Johnson Knapper; James Bernard Knighten; Maxine Jackson Lacy; Sandra Jean Davis Landrum; Caesar Latimer; Charles Sylvester Latimer; Hazel Latimer; James Harold Latimer; Jayphee Latimer; Lisa Latimer; Patrice Latimer; Burnece Lawler; Edward Lawson; Johnnye Cannon Lawson; Marcus Lawson; Margaret Ann Lawson; Palmer Lawson, Jr.; Glenda LeBeaux; Margaret Lee; Norma Jean Dennie Leshie; Jimmie Lewis; Joe Lewis; Lorraine Lewis; Cortez Lockard; Edward Lockard; Ernest Lockard; Frank Lockard; Jessie Mae Lockard; Oscar Lockard; Selma Lockard; Mary Loupe; Catherine Martin; Felton Martin; James Preston Martin; Nancy Martin; Faye May; Sarah Curvay Mayshaw; Leona Austin McCain; Pauline McCants; Denise McCray; Otis McCray, III; Lorraine McFarland; Jean Williams McGill; Donald John McGowan; Wallace McLeod, Jr.; Betty Presley McMillan; Ladawna Miller; Mildred Marian Hamel Miller; Peggy Ann McRuffin Mitchell; Oveta Mixon; Elizabeth Presley Monday; Pat Galbraith Moore; Ronald Earl Moore; Eva Gamble Morris; Clarinda Nails; Terry Nash; Eartha McAlester Norman; Mattie Davis Oliver; Lavada Louise Parker Osbourne; Audrey Banks Parson; John W. Patton; Lena Mae Johnson Payne; Julius Pegues; Geraldine Perryman-Tease; Wanda Ewing Pope; Esco Porterfield; Mark Porterfield; Jill Elizabeth Presley; Joyce Marie Presley; Lisa Presley; Raymond Presley; Ronald Dean Presley; Floyd Price; Jane Fair Pruett;

Marcia Walker Puckett; Joyce Ramsey; Allene Knighten Rayford; Mae Etta Reynolds; Shirley Ridley; Patsy Robinson; Frank Eugene Rodgers; Eric Rollerson; Leon Rollerson; Wila Rollerson; Yvonne Rollerson; Janice Lous Johnson Ross; Billie Wayne Rucker; J. C. Rucker; Robert C. Rucker; Bobbie Jean Saulet; Mildred Louise Davis Scott; Theresa Davis Scott; Yvonne Fair Shaw; Billy Shelton; Diana Lynn Shelton; Johnny Shelton; Maime Shelton; Shirley Shelton; Euna Vann Smith; Fred Smith; Harriet Adams Smith; Ora Smith; Claudia Maude Smitherman; Cathryn Bell Snoddy; Betty Spears; Diane Anderson Steele; Patricia McLeod Stephenson; Laurel Stradford; Rosa Striplin; Carrie M. McDonald Strother; Martha McGlorie Swindall; Audrey Taylor; Byron Taylor; Bobbie Jean Carter Tennyson; Sylvester Terry, Jr.; Margaret Tharpe; Jerry Fields Thomas; Jessie Thomas; Erma Smith Thompson; Pansy Tilley; Clifton Joe Tipton; Rosezella Turner; Shirley A. Johnson Tyus; Maxine Jessie Vaden; Lorenzo Carlos Vann; Alice Boyd Vaughn; Fannie Smith Verner; Pamela Vinson; Marietta Anderson Waiters; Denette Maria Walker; Frank Walker, Sr.; Harry Daniel Walker; Harvey Leon Walker; Riley Walker, Jr.; William D. Walker; Marge Wallace; Maybelle Wallace; Mildred Cannon Wallace; Sylvia Ware; Olene Walker Washington; Jimmie Wickam; Yvonne Wiley-Webb; Charlott Williams; David Williams; Fannie Williams; Grant Williams; Patricia Williams; Ida Louise Dennie Willis; Annie Alexander Wilson; Bertha Wilson; Bobbie Wilson; Elizabeth Wilson; Mary A. Wilson; Naomi Nash Williams Wimberly; Ramona Dinkins Wimberly; Edna Early Works; and Charlotte Wright.

In addition to the State of Oklahoma, which is named in the caption, the following parties appeared below and are respondents here: the City of Tulsa, the Chief of Police of Tulsa (in his official capacity), the City of Tulsa Police Department, and Does 1-100.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners John Melvin Alexander, *et al.*, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW AND JURISDICTION

The opinion of the district court (Pet. App. 18a-41a) is unpublished. The opinion of the Tenth Circuit (*id.* 1a-17a) is published at 382 F.3d 1206 (2004). The Tenth Circuit's denial of rehearing en banc and accompanying dissenting opinion (*id.* 42a-54a) are published at 391 F.3d 1155. The court of appeals issued its opinion on September 8, 2004, and denied rehearing on December 13, 2004. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

STATEMENT

At issue in this case is whether the City of Tulsa and the State of Oklahoma will be held accountable for the grave injuries they inflicted during the Tulsa Race Riot of 1921, one of the worst race riots in American history. Although the Riot left hundreds of African-Americans dead and forty-two square blocks of Greenwood – Tulsa's African-American neighborhood – burned to the ground, neither the City nor the State has ever taken any action to rectify the injuries they caused. Petitioners, who are survivors of the Riot and descendants of its victims, filed this action after a state commission formed to study the Riot published a report that – for the first time – documented the extensive involvement of state actors in the Riot. The district court dismissed petitioners' action as untimely, and the court of appeals affirmed.

1. In 1921, Greenwood was one of the most prosperous African-American communities in the United States. Serving over 8000 residents, Greenwood's commercial district was known nationally as the "Negro Wall Street." The community boasted two newspapers, over a dozen churches, and many African-American-owned businesses. Second Am. Compl. ¶¶ 445-53.

On May 31, 1921, Tulsa authorities arrested Dick Rowland, a young African-American, for allegedly assaulting a white elevator operator, charges that would later be dropped. A white mob gathered outside the courthouse where Mr. Rowland was jailed, and rumors of a lynching began to circulate. Knowing that local authorities had failed to prevent lynchings in the past, a group of African-American men went to the courthouse in an effort to protect Mr. Rowland. When a white man attempted to take a gun from one member of that group, a shot rang out and the Tulsa Race Riot began. Pet. App. 22a.

In the midst of a gun battle, the African-American men – who were vastly outnumbered by the white mob – retreated to Greenwood. Second Am. Compl. ¶ 465. All through the night and into the morning of June 1, 1921, a white mob ransacked Greenwood, shooting indiscriminately at African-Americans and burning almost every building in the community. Pet. App. 2a. Not only did the State and City fail to stop the destruction, but state and local officials participated in the violence and deputized and armed members of the white mob. *Id*. 3a-4a.

The Tulsa police chief deputized between 250 and 500 men, commandeering local gun shops and pawnshops in order to arm the new deputies. The police department ordered members of the mob to "go home, get a gun, and get a nigger." Second Am. Compl. ¶¶ 470-71. When the State National Guard arrived to assist the police, the guardsmen joined in the destruction and fired at will at African-American Greenwood residents. *Id.* ¶¶ 472-73, 481, 490.

As many as three hundred African-Americans were killed in the Riot, and over twelve hundred homes were destroyed (leaving most residents homeless). Every church, school, and business in Greenwood was set on fire.

2. Shortly after the Riot, the State convened a grand jury to determine its cause. The grand jury officially placed re-

sponsibility for the violence squarely on members of Greenwood's African-American community:

> [T]he recent race riot was the direct result of an effort on the part of a certain group of colored men * * *. [T]here was no mob spirit among the whites, no talk of lynching and no arms. The assembly was quiet until the arrival of the armed negroes which precipitated and was the direct cause of the entire affair * * *. [T]here existed indirect causes * * * [among which] were agitation among the negroes of social equality * * * which led them as a people to believe in equal rights, social equality, and their ability to demand the same.

Pet. C.A. Br. 6 (quoting Grand Jury Report). The grand jury indicted several African-American men for their alleged roles in the Riot, but no such indictments were ever issued for any white person. Newspapers and civic organizations joined the grand jury in heaping blame upon Greenwood residents. The Tulsa Tribune wrote:

> Such a district as the old "Niggertown" must never be allowed in Tulsa again * * *. In this old "Niggertown" were a lot of bad niggers and a bad nigger is about the lowest thing that walks on two feet * * * . Well, the bad niggers started it.

Ibid. (quoting the Tulsa Tribune, June 4, 1921).

Although over one hundred Greenwood residents and property owners filed lawsuits in an effort to recover damages from insurance companies, "[n]ot one of those suits was successful." Tulsa Race Riot: A Report By The Oklahoma Commission To Study The Tulsa Race Riot Of 1921, at 166-67 (Feb. 28, 2001) [hereinafter "Commission Report"], *available at* www.ok-history.mus.ok.us/trrc/freport.pdf. The City of Tulsa declined the myriad offers of private aid that flowed in from around the country, insisting that "Tulsa feels equal to the task of its own restitution." Pet. C.A. Br. 8 (quoting report in the Tulsa Tribune, June 3, 1921). Such promises were

hollow: the city provided no assistance in rebuilding Greenwood, and the victims of the Riot were left to rebuild their lives with their few remaining resources. *Ibid.* In addition, "local officials attempted to block the rebuilding of the Greenwood community by amending the Tulsa building code." Pet. App. 26a. Thousands spent the winter following the Riot living in tents, as they had been unable to build more permanent shelter. Commission Report 88-89. Thousands more fled Tulsa permanently. Pet. C.A. Br. 7.

The City and State quickly took steps to sweep the Riot "beneath history's carpet." Pet. App. 26a. Victims were buried in unmarked graves, neither the State nor the City undertook any investigations or prosecutions, and documents relating to the Riot vanished from state archives. Pet. C.A. Br. 8-9. The government's effort to eliminate memory of the Riot was so successful that the current mayor of Tulsa, Bill LaFortune, remarked in 1996, "I was born and raised here, and I had never heard of the riot." Pet. C.A. Br. 9. "Until recently, the Tulsa race riot has been the most important least known event in [Oklahoma's] entire history. Even the most resourceful of scholars stumbled as they neared it * * *." Commission Report 6.

3. The government's efforts to maintain this conspiracy of silence regarding the Riot lasted for seventy-five years – beyond the end of the Jim Crow era and the 1982 publication of Scott Ellsworth's book about the Riot, *Death in a Promised Land*. It was not until 1997 that the Oklahoma Legislature created a Commission to study the Riot. And the truth was not known until February 28, 2001, when – after four years of intense study and unprecedented efforts to gather new evidence – the Commission published its findings. The Commission's Report details the difficulty that Commission members and staff encountered in assembling evidence that revealed a fuller picture of what happened during the Riot: "As its work grew steadily more exacting and steadily more specialized, the commission turned to more experts [including] [l]egal scholars, archeologists, anthropologists, forensic

specialists, geophysicists." Pet. C.A. Br. 10 (quoting Dr. Scott Ellsworth, primary author of the report). Moreover, the report contained significant amounts of new evidence: "To write this report, Scott Ellsworth used evidence he did not have — no one had it — as recently as 1982. He cites that new evidence at least 148 times." Commission Report 8. The new Report made clear for the first time the extensive involvement of the State and City in the prosecution of the Riot. *Id.* at 11-12.

The Oklahoma Legislature adopted many of the Report's findings: "Perhaps the most repugnant fact regarding the history of the 1921 Tulsa Race Riot is that it was virtually forgotten * * *. This 'conspiracy of silence' served the dominant interests of the state during that period which found the riot a 'public relations nightmare' that was 'best to be forgotten * * *." Pet. App. 26a (quoting the Oklahoma Legislature's findings). In addition, the State acknowledged for the first time "that there were moral responsibilities at the time of the riot which were ignored and have been ignored ever since * * *." *Id.* 27a.

4. With the truth finally revealed, petitioners filed this suit against respondents – the Tulsa Police Department, the Tulsa Chief of Police, the City of Tulsa, and the State of Oklahoma. Pursuant to, inter alia, 42 U.S.C. 1981, 1983, and 1985, petitioners sought damages for the injuries that they sustained in the Riot as a result of the government's involvement. Respondents moved to dismiss.[1]

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[1] Respondents also sought sanctions against the petitioners for bringing the suit. The district court tersely rejected respondents' request, admonishing respondents that "the filing of the motion for sanctions is more troubling than the filing of the Complaint" and emphasizing that the request for sanctions "only fuels the belief that the State and City are ignoring their moral responsibility for the Riot." Pet. App. 40a. The district court chastised "[t]he contentious attitude" of respondents as "destructive and wasteful of judicial resources." *Ibid.*

The district court granted respondents' motions to dismiss, holding that Oklahoma's two-year statute of limitations barred petitioners from bringing their claims. Pet. App. 40a. Although petitioners advanced multiple theories as to why their claims were not time-barred, the district court considered these arguments collectively: "Regardless of the legal theory relied on, equitable estoppel, equitable tolling, or accrual, the gravamen of Plaintiffs' argument is that they did not and could not know of the City's involvement [in the Riot] any sooner." *Id.* 35a.

The district court rejected petitioners' contention that they could not have immediately known of the government's role in the Riot, and did not in fact know of that role until the Commission issued its report in 2001 and the government finally abandoned its false official stance that it bore no responsibility. In particular, the district court concluded that the allegations of petitioners' complaint demonstrated both that the victims of the Riot would have observed the government's role in the Riot and that some victims did in fact file lawsuits against the government shortly after the Riot. Pet. App. 35a.

The district court accepted, however, petitioners' argument that their case presented exceptional circumstances warranting the equitable tolling of the statute of limitations. Noting "the horror and devastation of the riot as well as the intimidation, misrepresentation and denial that took place afterward," the court found that "[t]he political and social climate after the riot simply was not one wherein the Plaintiffs had a true opportunity to pursue their legal rights." *Id.* 37a. The court also acknowledged that "intimidation, fear of a repeat of the Riot, inequities in the justice system, Klan domination in the courts, and the era of Jim Crow" constituted extraordinary circumstances that also required equitable tolling. *Id.* 37a. Yet the court ignored the continued "conspiracy of silence" that made attempts at legal redress futile prior to 2001, instead concluding that the statute ceased to toll at some unidentified point between the Riot and the present day. Relying on expert testimony that "the Jim Crow era ended in

the 1960's," the district court stated flatly that "[none] of the other exceptional circumstances continued until the Commission Report was published." *Ibid.*[2]

5. The Tenth Circuit affirmed. First, the court of appeals held that the district court had properly converted the defendants' motion to dismiss to a motion for summary judgment. See Pet. App. 5a-8a. Addressing the substance of petitioners' claims, the court of appeals first considered the district court's conclusion that those claims had accrued shortly after the Riot. The Tenth Circuit explained that, under its settled precedent, "[a] civil rights action accrues when facts that would support a cause of action are or should be apparent." Pet. App. 9a (alteration in original) (quoting *Fratus* v. *Deland*, 49 F.3d 673, 675 (CA10 1995)) (internal quotation marks omitted). Under this rule, the court explained, "a plaintiff need not have conclusive evidence of the *cause* of an injury in order to trigger the statute of limitations." *Id.* 10a (citing *Baker* v. *Bd. of Regents of the State of Kansas*, 991 F.2d 628, 632 (CA10 1993) (emphasis added)). Instead, the relevant question is whether "the plaintiff knew of facts that would put a reasonable person on notice that *wrongful conduct* caused the harm," without regard to the particular party responsible. *Ibid.* (emphasis added). Because petitioners' "injuries and *the general cause* of those injuries were obvious

[2] Petitioners subsequently sought to amend their complaint to add an *Ex Parte Young* claim seeking injunctive and declaratory relief against the Governor of Oklahoma – a form of relief that would not be precluded by sovereign immunity. The district court indicated that such an amendment "would normally be allowed at this relatively early stage of litigation" but deemed the issue "moot" based on its conclusion that petitioners' claims were barred by the statute of limitations. Pet. App. 39a. Petitioners challenged this ruling in the Tenth Circuit. See Pet. C.A. Br. 51-52. Thus, if this Court grants certiorari and reverses the statute of limitations holding, petitioners will almost certainly have a live *Ex Parte Young* claim against the Governor.

in the aftermath of the Riot," *id.* 11a (emphasis added), the court found that petitioners' claims had accrued in 1921 immediately after the Riot: "To start the running of the statute of limitations, our case law requires nothing more." *Ibid.*

The Tenth Circuit then turned to the district court's holding that the "extraordinary circumstances" justifying equitable tolling had "dissipated substantially by the 1960s." Pet. App. 11a. The court of appeals reviewed that determination for abuse of discretion, rather than *de novo*. The panel explained that under its well-settled precedent, absent "a definite and firm conviction that [it] has made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances," circuit precedent required it to affirm the district court. *Ibid.* (alteration in original) (quoting *Beaird* v. *Seagate Technologies, Inc.*, 145 F.3d 1159, 1164 (CA10 1998) (quoting, in turn, *McEwen* v. *City of Norman*, 926 F.2d 1539, 1553-54 (CA10 1991))) (internal quotation marks omitted). Although the court of appeals agreed that "in the immediate aftermath of the Riot and for several decades thereafter, extraordinary circumstances justified tolling the statute of limitations," *id.* 16a, it deferred to the district court's determination that petitioners "could have brought this action at some unspecified point prior to 2001," *id.* 11a.

Over the dissenting votes of four judges, the Tenth Circuit denied rehearing en banc. See Pet. App. 41a. Judge Lucero's dissent described petitioners' case as "presenting a 'question of exceptional importance.'" See *id.* 43a-57a. The dissenters emphasized that all previous lawsuits arising out of the 1921 Riot "fell upon the deaf ears of the courts at the time." *Id.* 43a. Notably, the dissenting judges would have held that the district court's equitable tolling holding failed even abuse of discretion review. *Id.* 52a-53a. Moreover, the dissenters noted, the court of appeals had compounded its error "by concluding that 'evidence suggesting the City and State's involvement in the Riot was available in its immediate aftermath and, at the very least, upon publication of *Death In A Promised Land* in 1982.'" The dissenters concluded that

the availability of facts about the government's involvement did not adequately respond to the extraordinary obstacles that petitioners faced, and they concluded that the district court had abused its discretion by failing to hold that "extraordinary circumstance[s] * * * persisted until the Commission filed its report." *Id.* 50a.

This petition followed.

REASONS FOR GRANTING THE WRIT

I. Certiorari Is Warranted In This Case To Resolve The Circuit Conflict Perpetuated By The Tenth Circuit's Erroneous Holding That The District Court's Equitable Tolling Ruling Is Reviewed For An Abuse Of Discretion, Not De Novo.

The first question presented by this case is the appropriate standard of review of a district court's application of equitable tolling. The courts of appeals have adopted three irreconcilable approaches to that question, and it is plain that the conflict cannot be resolved without this Court's intervention. The question is moreover of manifest importance. It arises frequently in civil litigation because equitable tolling claims are often resolved on summary judgment, and the standard of review is often outcome determinative on appeal. This case presents the Court with an ideal vehicle to resolve this question, which was squarely decided below. Finally, certiorari is warranted because the Tenth Circuit's holding that an abuse of discretion standard applies is wrong on the merits: *de novo* review is the appropriate standard when, as here, the question is purely the application of law to undisputed facts.

A. The Circuits Are Irreconcilably Divided Over the Standard of Review for Application of Equitable Tolling.

1. As the courts of appeals have repeatedly recognized, there is a conflict among the circuits over the appropriate standard of review of a district court's holding that a statute of limitations should or should not be equitably tolled. See

Rouse v. *Lee*, 339 F.3d 238, 247 nn.7 & 9 (CA4 2003) (en banc) ("The other circuits are divided on the proper standard of review * * *."), cert. denied, 124 S. Ct. 1605 (2004); *Jihad* v. *Hvass*, 267 F.3d 803, 806 n.3 (CA8 2001) ("Our sister circuits are not on accord on the issue."); *Neverson* v. *Farquharson*, 366 F.3d 32, 42 n.11 (CA1 2004) ("[T]he courts of appeal disagree over the standard of review * * *."). There are three irreconcilable standards: *de novo*; an intermediate standard that uses *de novo* review when the facts are undisputed or the issue was decided as a matter of law; and abuse of discretion.

a. The Tenth Circuit applies a categorical rule that all equitable tolling cases are reviewed under an abuse of discretion standard. The court of appeals recognized that the question before it was "whether the District Court abused its discretion in finding, based on undisputed evidence," that equitable tolling was inappropriate. Pet. App. 15a. The panel thus acknowledged that the underlying *historical* facts of petitioners' case were necessarily undisputed, as the case had been resolved on summary judgment. See *id.* 8a, 15a; *id.* 16a ("Rather, the judgment must stand if, based on the undisputed facts available, those [extraordinary] circumstances ended sometime prior to February 2001."); *id.* 37a (district court) ("The question is not a factual question of whether exceptional circumstances existed. They did. It is a legal question of the effect, with respect to the issue of statute of limitations, of those exceptional circumstances."); see also 10A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2712 (3d ed. 2004) (summary judgment is appropriate only when there is no genuine dispute regarding any material fact). Yet, it then proceeded to "review the district court's refusal to apply equitable tolling" to those undisputed facts "for an abuse of discretion." Pet. App. 9a (quoting *Garrett* v. *L.E. Fleming*, 362 F.3d 692, 695 (CA10 2004)) (internal quotation marks omitted). The district court's ruling here was that, although a lawsuit against the City and State would have been futile for more than forty years after the Riot, a jury

would necessarily have found that the extraordinary circumstances vanished at some point during the 1960s, at which time the elderly survivors of the Riot should have known to file their suit, without any positive developments having occurred in the interim that might have given petitioners any reason to doubt that a suit would still be futile. Despite this counterintuitive conclusion about what a jury would necessarily have concluded, the court of appeals nonetheless applied its deferential abuse of discretion standard.

Consistent with the Tenth Circuit's holding, five other circuits – the First, Second, Fourth, Fifth, and Seventh – apply the same categorical abuse of discretion standard, even in cases with undisputed facts. See, *e.g.*, *Neverson*, 366 F.3d at 42; *Zerilli-Edelglass* v. *New York City Transit Auth.*, 333 F.3d 74, 81 (CA2 2003); *Rouse*, 339 F.3d at 247 n.6; *Fierro* v. *Cockrell*, 294 F.3d 674, 679 (CA5 2002); *Clark* v. *Runyon*, 116 F.3d 275, 277 (CA7 1997).

b. By contrast, at least five circuits – the Sixth, Eighth,[3] Ninth, District of Columbia, and Federal – employ an intermediate approach, using a *de novo* standard of review in cases in which (as here) the facts underlying the equitable tolling claim are undisputed or the district court made its determination as a matter of law. See, *e.g.*, *Dunlap* v. *United States*, 250 F.3d 1001, 1007 (CA6 2001) ("We review *de novo* the district court's decision not to apply the doctrine of equitable tolling inasmuch as the facts in this case are undisputed and the district court determined as a matter of law that there were no grounds that would justify equitable tolling in Petitioner's case."); *Jihad*, 267 F.3d at 806 n.3 ("Because the [district] court appeared to treat equitable tolling as an issue of law, we have reviewed its ruling *de novo*."); *Miles* v. *Prunty*, 187 F.3d

[3] The Eighth Circuit has held that *de novo* review is appropriate when there are no findings of fact and the issue was decided as a matter of law. *Jihad*, 267 F.3d at 806 n.3. It has not yet definitively determined the appropriate standard when the facts are disputed.

1104, 1105 (CA9 1999) ("[W]here, as here, the facts are undisputed as to the question of equitable tolling, we review de novo * * * ."); *United States* v. *Saro*, 252 F.3d 449, 455 n.9 (CADC 2001) ("[W]e employ de novo review when a district court holds – as the court appears to have done here – that the facts cannot justify equitable tolling as a matter of law."); *Former Employees of Sonoco Prods. Co.* v. *Chao*, 372 F.3d 1291, 1295 (CAFC 2004) ("Thus, cases falling in the middle of the spectrum, requiring application of the appropriate standard to undisputed facts, are properly questions of law reviewed de novo by this court.").

c. Finally, the Eleventh Circuit has adopted yet a third rule: that court applies a *de novo* standard in all equitable tolling cases. See, *e.g.*, *Helton* v. *Sec'y for Dep't of Corr.*, 259 F.3d 1310, 1312 (2001) ("We review the district court's application of equitable tolling *de novo*, as the question is 'solely one of law.'" (quoting *Sandvik* v. *United States*, 177 F.3d 1269, 1271 (CA11 1999))). It applies *de novo* review even when the facts underlying equitable tolling are disputed. See, *e.g.*, *Miranda* v. *B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1531-32 (1992) (employing *de novo* standard despite dispute over whether the defendant misled the plaintiff into believing it would correct the problem).

2. Only this Court can resolve this entrenched conflict. First, although the courts of appeals have been presented with numerous opportunities to resolve the conflict themselves, they have repeatedly refused to do so. For example, the Eleventh Circuit denied rehearing en banc in a case in which the panel had vacated its original opinion, which had used an abuse of discretion standard of review, and replaced it with an opinion using a *de novo* standard. See *Helton* v. *Sec'y for Dep't of Corr.*, 233 F.3d 1322, 1325 (2000) (employing abuse of discretion standard), opinion superseded by *Helton* v. *Sec'y for Dep't of Corr.*, 259 F.3d 1310, 1311-12 (2001) (adopting a de novo standard of review); *Helton* v. *Sec'y for Dep't of Corr.*, 275 F.3d 49, 49 (2001) (denying rehearing en banc). Other circuits have similarly rejected excellent opportunities

to resolve the issue en banc. See, *e.g.*, *Former Employees of Sonoco Prods., Co.*, 372 F.3d at 1294-96 (standard considered at length by panel); *Saro*, 252 F.3d at 455 n.9; *Zerilli-Edelglass*, 333 F.3d at 81 n.7 (noting that in light of prior precedent indicating that standard was *de novo*, panel circulated draft opinion applying abuse of discretion standard to all active judges, none of whom requested rehearing en banc). Moreover, two circuits – the Fourth and First – have adopted abuse of discretion standards after expressly recognizing the divergent positions of other circuits. *Rouse*, 339 F.3d at 247 nn.6 & 7; *Neverson*, 366 F.3d at 42 & n.11 (citing *Rouse*).

Furthermore, this division among the circuits is longstanding. The Ninth Circuit has employed the intermediate standard of review – using *de novo* review in cases involving undisputed facts – for almost twenty years. See *Valenzuela* v. *Kraft, Inc.*, 801 F.2d 1170, 1172 (1986). The Eleventh Circuit has used a *de novo* standard in all equitable tolling cases for over twelve years, see, *e.g.*, *Miranda*, 975 F.2d at 1531, while the First Circuit has effectively employed the abuse of discretion standard since 1992, see *Jimenez* v. *Peninsular & Oriental Steam Navigation Co.*, 974 F.2d 221, 226 n.10 (1992) (citing "plain error" standard in declining to allow equitable tolling). Accordingly, only this Court can bring needed uniformity to this recurring question of federal law.

3. Certiorari should be granted for the further reason that the question presented is outcome determinative in a substantial body of civil litigation. As this Court has repeatedly recognized, the standard of review is frequently dispositive; this Court has accordingly granted certiorari in numerous cases presenting disputes over the standard of review, and has reversed or vacated and remanded when the court below has used the wrong standard. See, *e.g.*, *Cooper Industries, Inc.* v. *Leatherman Tool Group, Inc.*, 532 U.S. 424, 431, 441 (2001); *Ornelas* v. *United States*, 517 U.S. 690, 695, 700 (1996); *Koon* v. *United States*, 518 U.S. 81, 91, 100 (1996); *Denton* v. *Hernandez*, 504 U.S. 25, 33 (1992). In some of these cases, the circuit conflict at issue was far less developed than it is

here, yet the Court deemed certiorari appropriate. See Resp. BIO to Pet. for Cert. 9, *Cooper Indus.* (No. 99-2035) (noting that no circuit had acknowledged the conflict); Pet. for Cert. 15-16, *Koon* v. *United States* (No. 94-1664) (conflict involved only three circuits).

The standard of review has also proven outcome determinative in equitable tolling cases in particular. For example, in *Helton*, Eleventh Circuit precedent dictated that the panel should have reviewed *de novo* the district court's determination to apply equitable tolling in light of attorney miscalculations and deficiencies in the prison library system. In its original opinion, the panel nonetheless applied the "abuse of discretion" standard and affirmed, see 233 F.3d at 1325, but on rehearing it correctly applied the *de novo* standard of review and reversed, concluding that the case did not present extraordinary circumstances that warranted equitable tolling. *Helton*, 259 F.3d at 1313. Similarly, in *Miller* v. *Collins*, 305 F.3d 491, 495-96 (2002), the Sixth Circuit applied *de novo* review to undisputed facts and reversed the district court's refusal to invoke equitable tolling because it concluded that it was not unreasonable for the petitioner to wait nine months for a state court judgment before proceeding with a federal action. Under an abuse of discretion standard, the court of appeals likely would have deferred to the district court's conclusion that this delay was unreasonable and upheld the denial of equitable tolling.

4. The conflict over the standard of review is furthermore intolerable because of the importance of equitable tolling in modern litigation. Every year, the federal courts consider a vast number of cases seeking equitable tolling. Indeed, over the last two years alone, the courts of appeals have addressed the issue in over 350 cases and have explicitly discussed the standard of review in roughly 70 of them. In the past two years, equitable tolling claims have been presented to all thirteen circuits, with eleven expressly addressing the standard of review. The vast majority of these cases implicate the core of the circuit split because the equitable tolling

issue is decided at the motion to dismiss or summary judgment stage, and the facts are therefore undisputed.

Moreover, the importance of the issue presented is reflected by the extraordinary breadth of the contexts in which it regularly arises. See, *e.g.*, *Weigel* v. *Baptist Hosp. of E. Tenn.*, 302 F.3d 367, 376 (CA6 2002) (ADEA); *Santa Maria* v. *Pacific Bell,* 202 F.3d 1170, 1175-76 (CA9 2000) (ADA); *Garrett* v. *Fleming*, 362 F.3d 692, 695 (CA10 2004) (*Bivens* action); *United States* v. *All Funds Distributed to, or on Behalf of, Weiss*, 345 F.3d 49, 54 (CA2 2003) (civil forfeiture); *Maurizio* v. *Goldsmith*, 230 F.3d 518, 520 (CA2 2000) (copyright); *Fisher* v. *Johnson*, 174 F.3d 710, 713 (CA5 1999) (habeas corpus); *Arnold* v. *Air Midwest, Inc.*, 100 F.3d 857, 861 (CA10 1996) (labor law); *Chung* v. *United States Dep't of Justice*, 333 F.3d 273, 279 (CADC 2003) (Privacy Act); *Smith* v. *Pennington*, 352 F.3d 884, 892 (CA4 2003) (securities); *Azer* v. *Connell*, 306 F.3d 930, 936 (CA9 2002) (Section 1983); *Johnson* v. *Henderson*, 314 F.3d 409, 413-14 (CA9 2002) (sexual harassment); *Teemac* v. *Henderson*, 298 F.3d 452, 457 (CA5 2002) (Title VII); *Justice* v. *United States*, 6 F.3d 1474, 1478 (CA11 1993) (tort); *Romagoza Arce* v. *Garcia*, No. 02-14427, 2005 U.S. App. LEXIS 3505 (CA11 Feb. 28, 2005) (Torture Victim Protection Act and Alien Tort Claims Act).

B. This Case Presents the Ideal Vehicle for Resolving This Important Circuit Conflict.

The present case is an ideal vehicle for the Court to resolve the question presented because the decision below directly addressed the standard of review, Pet. App. 8a, and rejected petitioners' assertion that the denial of equitable tolling was "a pure question of law, reviewed *de novo*." Pet. C.A. Br. 14-15. Based on its past practice, the Court will likely decide the appropriate standard of review, then (if it agreed with petitioners that *de novo* review was appropriate) remand the case to the Tenth Circuit for further proceedings under that standard. See *Cooper Industries*, 532 U.S. at 444 (vacat-

ing and remanding to apply *de novo* review); *Ornelas*, 517 U.S. at 700 (same); *Denton*, 504 U.S. at 35 (vacating and remanding to apply abuse of discretion review). Nonetheless, it is worth recognizing that the facts of this case as it comes to the Court illustrate the importance of the standard of review. A less deferential review by the Tenth Circuit likely would have led to reversal. The court merely held that "the District Court did not abuse its discretion," Pet. App. 15a, not (as respondents had principally argued) that the district court was right on the merits. And it moreover repeatedly reiterated its reliance on that Circuit's lenient standard of review. See *id.* 8a; *id.* 11a; *id.* 15a; *id.* 17a. Further, because four judges voted to rehear the case en banc, with two judges explicitly indicating that they would have reversed *even under an abuse of discretion standard*, *id.* 44a (Lucero, J., dissenting from denial of rehearing en banc) ("The trial court abused its discretion * * * [by] incorrectly finding that equitable tolling had lifted at some unspecified point in the past."), application of a *de novo* standard likely would have changed the outcome of the case.

Specifically, application of *de novo* review would compel reversal because the district court made a number of unwarranted assumptions to which the Tenth Circuit deferred. In particular, although the district court held that extraordinary circumstances justifying equitable tolling existed in the wake of the Tulsa Race Riot, it concluded – apparently *as a matter of law* – that a jury would have been required to find that the extraordinary circumstances dissipated at some unspecified point in the 1960s, and that petitioners should have known at that time that their suit somehow ceased to be futile. Pet. App. 37a.

That holding is insupportable. In fact, it is undisputed that the City of Tulsa and the State of Oklahoma denied their involvement in directing and organizing the Riot until the Commission's report in 2001. This denial primarily took the form of a grand jury report that blamed the uprising on the African-American residents of Greenwood. It is further un-

disputed that the state and city participated in a "conspiracy of silence" for over seventy-five years in an effort to sweep the Riot "well beneath history's carpet." Pet. App. 26a (quoting the Oklahoma Legislature's findings). The district court rejected the argument that "the *official* denials of government culpability and *official* pronouncements that the African-American community was to blame" that "would have fatally tainted any lawsuit" were extraordinary circumstances that persisted until "the first and only *official* reversal of those positions" in the 2001 Commission Report. Pet. App. 50a (Lucero, J., dissenting from denial of rehearing en banc) (emphasis in original). Instead, the district court reached the erroneous conclusion that a jury could only have found that the extraordinary circumstances that existed for decades in the wake of the Riot – circumstances that, according to the district court, did prevent any realistic opportunity for petitioners to obtain legal relief – somehow unquestionably evaporated at some point during the 1960s. *Id.* 37a.

Even though the district court's decision was a legal judgment based on undisputed facts, the court of appeals undertook only a perfunctory review of the district court's reasoning. Rather than analyzing whether "the continued renunciation of government culpability by those in power created an impenetrable barrier to justice" that could be classified as extraordinary, Pet. App. 49a (Lucero, J., dissenting from denial of rehearing en banc), the court of appeals held that "the District Court did not abuse its discretion in holding that the exceptional circumstances which tolled the statute of limitations immediately after the Riot had dissipated sufficiently to trigger running of the statute at some point prior to 2001." Pet. App. 17a. Thus, in this case, as in *Cooper Industries*, "it does seem likely that * * * a thorough, independent review of the District Court's [decision] * * * might well have led the Court of Appeals to reach a different result" because of "a series of questionable conclusions by the District Court that may not survive de novo review." 532 U.S. at 441.

C. *De Novo* Review Is the Correct Standard for Reviewing the Application of Equitable Tolling to Undisputed Facts.

Certiorari is moreover warranted because the decision below was wrong on the merits: *de novo* review is the correct standard of review in cases involving the application of equitable tolling to undisputed facts. The Tenth Circuit's distinction between abuse of discretion review for summary judgment based on equitable tolling and *de novo* review for all other summary judgment decisions is unsound. Equitable tolling in this context is no different from any other summary judgment question: the court must decide whether a reasonable jury *could* conclude that the undisputed facts could reasonably meet the legal standard. Cf. *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 371 (1995) (stating that summary judgment would be appropriate if undisputed facts showed that a maritime worker could not meet the legal standard for seaman status); *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) ("[T]he trial judge shall then grant summary judgment if there is no genuine issue as to any material fact and if the moving party is entitled to judgment as a matter of law."). The Tenth Circuit itself has acknowledged that summary judgment rulings are generally reviewed *de novo*, but without explanation it applies abuse of discretion review when a question of equitable tolling is presented. *Harms* v. *IRS*, 321 F.3d 1001, 1006 (2003), cert. denied, 540 U.S. 858 (2003).

The Tenth Circuit's application of abuse of discretion review specifically cannot be reconciled with this Court's precedent. This Court has squarely held that *de novo* appellate review is appropriate when, as here, "the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the [relevant legal] standard * * *." *Ornelas*, 517 U.S. at 696 (quoting *Pullman-Standard* v. *Swint*, 456 U.S. 273, 289 n.19 (1982)) (whether facts meet legal standards of "reasonable suspicion" and "probable cause" reviewed *de novo*); see also *Cooper Indus-*

tries, 532 U.S. at 435-36 (whether facts justify legal conclusion of "grossly excessive" punitive damages reviewed *de novo*).

De novo review is also appropriate in light of the factors this Court considers in determining the appropriate standard of review. First, the exact meaning of the concept "extraordinary circumstances" cannot precisely be articulated because it is a "fluid concept[] that take[s] [its] substantive content from the particular context[] in which the standard[] [is] being assessed." *Cooper Industries*, 532 U.S. at 436 (quoting *Ornelas*, 517 U.S. at 695-96). Therefore, *de novo* review is necessary to unify precedent and stabilize equitable tolling law so as to "help[] to assure the uniform general treatment of similarly situated persons that is the essence of law itself." *Ibid.* (quoting *BMW of North America, Inc.* v. *Gore*, 517 U.S. 559, 587 (1996) (Breyer, J., concurring)); see also *Ornelas*, 517 U.S. at 697-98.

Second, the legal rules for equitable tolling "acquire content only through application" to the facts of particular cases. *Ornelas*, 517 U.S. at 697; *Cooper Industries*, 532 U.S. at 436. Giving substantial presumptive weight to the assessments of district judges would undermine the appellate courts' role as the primary "expositor[s] of law." *Miller* v. *Fenton*, 474 U.S. 104, 114 (1985). Thus, independent review is necessary if the "appellate courts are to maintain control of, and to clarify, the legal principles." *Ornelas*, 517 U.S. at 697.

Third, *de novo* review is warranted because the district court is in no better position than the court of appeals to decide the equitable tolling question on undisputed facts. See *Miller*, 474 U.S. at 114; *Ornelas*, 517 U.S. at 701 (Scalia, J., dissenting). The equitable tolling determination in this circumstance depends on neither an evaluation of the credibility of the witnesses nor an inquiry into state of mind. *Miller*, 474 U.S. at 113-14, 116-17. Because the appellate judge is just as capable of determining whether a jury could find that "under the totality of the circumstances" the case is so extraordinary

as to justify equitable tolling, *id.* at 112, abuse of discretion review is not required.

Certiorari should accordingly be granted to resolve the appropriate standard for reviewing a district court's ruling on a claim of equitable tolling.

II. Certiorari Is Warranted To Resolve The Circuit Conflict Over Whether A Claim May Accrue Under Federal Law Regardless of Whether Petitioners Knew Or Reasonably Could Have Known Of The Defendants' Responsibility For Their Injuries.

A. The Tenth Circuit's Accrual Rule Broadens an Entrenched Circuit Conflict.

The Tenth Circuit held in this case that petitioners' claims accrued immediately after the Tulsa Riot in 1921 because they purportedly "knew of facts that would put a reasonable person on notice that wrongful *conduct* caused the harm." Pet. App. 10a (emphasis added) (citing *Baker* v. *Bd. of Regents of the State of Kansas*, 991 F.2d 628, 632 (CA10 1993)). The court ruled that it was sufficient that petitioners' *injuries* were "public and obvious," even if the responsible actors were not. See Pet. App. 10a & n.4. In so holding, the Tenth Circuit deemed it irrelevant as a matter of law that it could not fairly be said until 2001 – when the Commission released its report and the State's and City's previous denials finally gave way to an acceptance of responsibility – that petitioners knew of respondents' central role in the Riot and hence petitioners' injuries.[4]

[4] Although the Tenth Circuit's opinion did address whether petitioners were aware that the government had some connection to the Riot, it did so only in the context of the question of equitable tolling. The court of appeals there addressed only the "narrow issue [of] * * * whether the District Court abused its discretion" in failing to toll the statute of limitations. See Pet. App. 15a. In the context of *accrual*, the Tenth Circuit deemed it entirely irrelevant that the petitioners did not know prior to 2001 of the government's

Thus, on the Tenth Circuit's view, it makes no difference whether the plaintiff knew or could have known of a particular defendant's relationship to the wrongful conduct. The Third, Fourth, and Ninth Circuits follow the same rule. See *Zeleznik* v. *United States*, 770 F.2d 20, 22-24 (CA3 1985); *Gould* v. *United States Dep't of Health & Human Servs.*, 905 F.2d 738, 742-43 (CA4 1990); *Gibson* v. *United States*, 781 F.2d 1334, 1344 (CA9 1986).

The Tenth Circuit's accrual rule conflicts with the holdings of other circuits that a claim against the government does not accrue when a plaintiff is aware of the existence and the source of his injury, but does not know the *government's* responsibility for that injury. The First, Fifth, Seventh, and Eleventh Circuits hold that a claim does not accrue until the plaintiffs knew or should have known of the government's relationship to their injuries. See *Skwira* v. *United States*, 344 F.3d 64, 77 (CA1 2003) (holding that "the proper subject of knowledge for accrual purposes * * * is (1) the fact of injury and (2) the injury's causal connection with the government"), cert. denied, 124 S. Ct. 2836 (2004); *Lavellee* v. *Listi*, 611 F.2d 1129, 1131 (CA5 1980) (holding that "a cause of action accrues * * * when the plaintiff is, or should be, aware of both the injury and its connection with the acts of defendant"); *Drazan* v. *United States*, 762 F.2d 56, 59 (CA7 1985) (Posner, J.) (holding that "the knowledge that is required to set the statute of limitations running is knowledge of the government cause"); *Diaz* v. *United States*, 165 F.3d 1337, 1340 (CA11 1999) (holding that "[t]he cause of which a federal tort claimant must have notice for the statute of limitations to begin to run is the cause that is in the government's control, not

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role in the Tulsa Riot. For its part, the district court found it telling that victims would have known that uniformed men had participated in the Riot, but the district court did not find – and certainly did not find it undisputed – that victims of the Riot knew or should have known that city and state officers were acting in their official capacity under the instructions of the respondents.

a concurrent but independent cause that would not lead anyone to suspect that the government had been responsible for the injury" (quoting *Drazan*, 762 F.2d at 59)).

2. This Court's intervention is required to resolve the conflict because, although the courts of appeals have repeatedly expressly acknowledged the circuit conflict regarding when a claim accrues, they have nonetheless been unwilling or unable to resolve this conflict on their own. See, *e.g.*, *Diaz*, 165 F.3d at 1340-41 (concluding that the "better rule" was to delay accrual until "the plaintiff knows, or exercising reasonable diligence should know, both of the [injury] and its causal connection *with the government*" (emphasis added); *Zeleznik*, 770 F.2d at 23.

In other cases, courts of appeals have deemed themselves bound by their own precedent, even when that precedent results in a standard that the court regards as inconsistent with the law of this Court. Thus, in *Gibson*, the Ninth Circuit recognized "the strategic importance to the litigant of knowing whom to sue" and conceded that Supreme Court precedent weighed in favor of a different rule for accrual. 781 F.2d at 1344 ("Language in [*United States* v. *Kubrick*, 444 U.S. 111, 122 (1979)] * * * supports plaintiffs' proposed construction" that a claim does not accrue until the plaintiff has knowledge of the government's responsibility for the injury). Yet because it felt constrained by its own precedent, the Ninth Circuit nevertheless held that notice of injury alone was sufficient to trigger the statute of limitations. *See ibid.* ("[B]inding circuit precedent forecloses us from considering such an extension of *Kubrick*." (citing *Dyniewicz* v. *United States*, 742 F.2d 484 (CA9 1984))).

B. Petitioners' Constitutional Claims Did Not Accrue Until They Were Able to Learn of State Actors' Connection to Their Injuries.

Certiorari is also warranted because the decision below is wrong on the merits. When a plaintiff is blamelessly unaware of a defendant's involvement in the events causing the harm,

that plaintiff's claims do not accrue until she could have, with reasonable diligence, learned of the defendant's role. That is particularly true when, as here, the defendant has resolutely denied responsibility and officially blamed the victims. Given the lack of information available to petitioners at the time of the Riot, the court of appeals should have held that their Section 1983 and constitutional claims accrued when they knew or should have known of state actors' involvement in the Riot, as both this Court's precedents and principles of justice mandate that constitutional claims do not accrue until a plaintiff should know that the defendant caused the harm at issue.

It is well established that a federal claim does not accrue until the injured plaintiff is able to learn the identity of the party who caused the harm. This Court has been careful to distinguish between the defendant's role in the harm and the defendant's negligence – while a plaintiff must have knowledge of the former, evidence of the latter is not essential for a claim to accrue. Thus, in *Kubrick*, which involved a medical malpractice suit brought under the Federal Tort Claims Act, this Court held that a federal claim accrues when the plaintiff knows of his injury and possesses information about the cause of that injury. 444 U.S. at 122. In describing these requirements, this Court noted that "the facts about causation may be in the control of the putative defendant, unavailable to the plaintiff or at least very difficult to obtain. The prospect is not so bleak for a plaintiff in possession of the critical facts that he has been hurt and *who has inflicted the injury*. He is no longer at the mercy of the latter." *Ibid.* (emphasis added). This Court's commonsense reasoning in *Kubrick* dictates that a claim does not accrue when a plaintiff is unable to obtain the "critical fact" of the defendant's identity.[5]

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[5] In *Kubrick*, a medical patient had knowledge that a doctor's decision to administer an antibiotic led to his loss of hearing, but was unable to discover for years that the doctor's choice of treatment was negligent. The court of appeals held that the plaintiff's

A defendant's identity is never more critical than when the plaintiff is asserting a Fourteenth Amendment under 42 U.S.C. 1983. A claim under Section 1983 only arises when the defendant is acting "under color of any statute, ordinance, regulation, custom or usage of any State." Similarly, in claims based on the Fourteenth Amendment, a defendant's action does not deprive a plaintiff of constitutional rights unless defendant is a state actor. See, *e.g.*, *Am. Mfrs. Mut. Ins. Co.* v. *Sullivan*, 526 U.S. 40, 49-50 (1999) ("Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful." (quoting *Blum* v. *Yaretsky*, 457 U.S. 991, 1002 (1982)) (internal quotation marks omitted). Accordingly, it makes no sense to say that a plaintiff must bring a Section 1983 suit before she knows that the state was responsible for the injury. Cf. *Barrett* v. *United States*, 689 F.2d 324, 330 (CA2 1982) ("It is illogical to require a party to sue the government for negligence at a time when the Government's responsibility in the matter is suppressed in a manner designed

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claim did not accrue until he had knowledge "that the treatment was *improper*." *Kubrick*, 444 U.S. at 116 (emphasis added) (quoting 581 F.2d 1092, 1097 (CA3 1978)). The *Kubrick* Court reversed, holding that accrual does not depend on a plaintiff's knowledge that his legal rights have been violated. See 444 U.S. at 122-24. Although the decision did not specifically identify the appropriate standard for determining when a claim accrues, it strongly suggested that it would have been proper for the court of appeals to hold that an FTCA "malpractice claim would not accrue until the plaintiff knew or could reasonably be expected to know of the Government's breach of duty." *Id.* at 125. Three justices would have applied a broader accrual rule that would require evidence of defendant's wrongdoing before a claim could accrue. See *Kubrick*, 444 U.S. at 125-26 (Stevens, J., dissenting) (arguing that the appropriate rule is "that the statute of limitations does not begin to run until after fair notice of the invasion of the plaintiff's legal rights").

to prevent the party, even with reasonable effort, from finding out about it.").

In this case, to be sure, petitioners were aware of their *injuries* at the time of the Riot. As the court of appeals noted, "they had the painful experience of watching neighbors die and seeing their homes and businesses burn." Pet. App. 9a. Indeed, in the wake of the Riot, some victims even filed lawsuits against the city; as Judge Lucero notes in his dissent, however, those suits "fell upon the deaf ears of the courts at the time," Pet. App. 43a, in no small part because of the government's categorical denial of responsibility and placement of blame on the victims, and the grand jury's official exoneration of white rioters.[6] The court of appeals erroneously assumed, however, that petitioners' claims accrued regardless of whether they knew of the government's involvement. *Id.* 10a ("Plaintiffs' injuries and the general cause of those injuries were obvious in the aftermath of the Riot. To start the running of the statute of limitations, our case law requires nothing more."). Until they knew of the government's involvement in the prosecution of the Riot, however, petitioners could not have known of the *constitutional* injuries that they suffered. The city and state's role in the Riot caused the harm that underlies petitioners' claims under Section 1983 and the Fourteenth Amendment, and petitioners' claims thus could

[6] The mere existence of such suits does not, for several reasons, preclude *all* petitioners from bringing the claims at issue in this case. First, not only were the 1923 allegations regarding the City's culpability made by only a fraction of the victims, but those allegations were neither widely known nor the subject of any significant publicity. Second, petitioners should not be deemed interchangeable and thus should not all be charged with being aware of the allegations of a handful of victims in 1923. Put another way, there are disputed issues of fact regarding whether knowledge of the allegations can fairly be imputed to each petitioner. Third, and in any event, the 1923 suits did not allege culpability on the part of *State* officials.

not have accrued until they should have known not only of their injuries, but of their governmental cause.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles J. Ogletree, Jr.
(Counsel of Record)
1575 Massachusetts Ave.
516 Hauser Hall
Cambridge, MA 02138
(617) 496-2054

Michael D. Hausfeld
Agnieszka M. Fryszman
Cohen Milstein Hausfeld & Toll, P.L.L.C.
1100 New York Ave. NW
Suite 500, West Tower
Washington, DC 20005

Adjoa A. Aiyetoro
P.O. Box 90604
Washington, DC 20090

Michele A. Roberts
Akin Gump Strauss Hauer & Feld, LLP
1333 New Hampshire Ave. NW
Washington, DC 20007

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[7] Counsel for petitioners were principally assisted by the following students in the Harvard Law School Supreme Court Litigation class under the supervision of Thomas Goldstein and Amy Howe: Mark Conrad, Elissa Hart, and Gregory Reilly. Class members Jeffrey M. Harris, Christopher Houpt, Anton Metlitsky, Won Shin, Alixandra Smith, Sharmila Sohoni, and Neel Sukhatme also participated.