21-0552-cv

United States Court of Appeals

for the

Second Circuit

DAVID M. ROEDER, individually and on behalf of a class of similarly situated individuals, SUSANNE A. ROEDER, individually and on behalf of a class of similarly situated individuals, RODNEY SICKMANN, individually and on behalf of a class of similarly situated individuals, DON COOKE, individually and on behalf of a class of similarly situated individuals, MARK SCHAEFER, individually and on behalf of a class of similarly situated individuals,

Plaintiffs-Appellants,

– v. –

J.P. MORGAN CHASE & CO., successor by merger to Chase Manhattan Corporation, JPMORGAN CHASE BANK, N.A., successor by merger to Chase Manhattan Bank,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF BRIEF FOR PLAINTIFFS-APPELLANTS

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INTRODUCTION

On November 4, 1979, Iranian terrorists took 66 Americans hostage at the United States embassy in Tehran and the Iranian Foreign Ministry (the "Hostages"). Fifty-two of those hostages would be held for 444 days of torture and abuse. On January 20, 1981, the blindfolds came off and the hostages returned home. There were recriminations in Washington and, a decade later, congressional investigations. The ordeal left an indelible mark on American foreign affairs and a permanent trauma for the American diplomats, military personnel, and family members who survived it. In time, the Iran Hostage Crisis entered into the history books: the record seemed settled on what prompted the hostage taking and why it lasted so long.

In that record, Chase Manhattan Bank ("Chase") and its chairman David Rockefeller played a big part. An uprising in Iran had forced its monarch, the Shah, into exile. Rockefeller and Kissinger had openly lobbied the Carter Administration to offer the Shah a safe harbor. Carter declined, until the Shah's health took an apparent turn for the worse. Then, believing that the Shah was on death's door, Carter agreed to let him enter the U.S. for medical treatment. In response, Iranian revolutionaries seized hostages in exchange for the Shah. Yet the hostage taking continued even after the Shah died in July 1980 and even after President Carter lost the presidential election in November 1980—one of the stated goals of the hostage takers. The Hostages were not released until January 20, 1979, the day of President

Reagan's inauguration. In that public record, Chase came across as a friend of the Shah and an opponent of Carter—but hardly as a villain responsible for any intentional harm.

That record was turned on its head on December 29, 2019, when the *New York Times* published an article titled "How a Chase Bank Chairman Helped the Deposed Shah of Iran Enter the United States" (the "2019 *New York Times* Article").[1] In the years after their release, the Hostages groped in the dark for answers. Why did Carter mistakenly believe the Shah was on death's door? And why was their release delayed for so long?

It turns out the answers had been kept secret by Chase, concealed by a series of deceptions dating back to 1979. For the first time ever, the 2019 *New York Times* Article revealed that secret documents from former Chase Vice-President Joseph V. Reed, Jr. had been kept under seal at Yale University until the death of Rockefeller in 2017. Those documents contained three shocking revelations.

Starting in 1979, Chase launched what it called "Project Eagle," a covert campaign on behalf of the Shah and his family to restore the Iranian monarchy. In 2019, the Hostages learned that Chase's Project Eagle engaged in three courses of

[1] David D. Kirkpatrick, "How a Chase Bank Chairman Helped the Deposed Shah of Iran Enter the U.S.," *N.Y. Times*, Dec. 29, 2019, https://www.nytimes.com/2019/12/29/world/middleeast/shah-iran-chase-papers.html.

wrongful conduct, spanning from 1979 all the way up to 2017, when the seal was finally lifted. *First*, Chase fooled President Carter into admitting the Shah on the false pretext of an imminent medical emergency. *Second*, and most damning of all, after the Hostages were seized in retaliation, Chase successfully sabotaged President Carter's negotiations with Iran in a bid to prevent the Hostages' release until the inauguration of President Ronald Reagan, whom Chase viewed as more pliant.

Lastly, Chase and its agents covered up their tracks. Chase's scheme was, in the words of a Project Eagle conspirator, "smooth, smooth, smooth and almost entirely invisible." J.A. __ (2019 *New York Times* Article). Chase and its agents failed to register as foreign agents as required by the Foreign Agents Registration Act ("FARA"), 22 U.S.C. §§ 611-21; perjured themselves before congressional investigators; lied to a former hostage and to the press; and then hid incriminating evidence under seal.

Within three months of learning that Chase had deliberately prolonged their captivity, the Hostages filed this action on March 17, 2020, pleading a conspiracy to injure federal officers under 42 U.S.C. § 1985(1) and state-law claims sounding in, among others, negligence and negligence *per se* for violations of FARA and the Logan Act, 18 U.S.C. § 953.

The District Court, however, granted Chase's motion to dismiss the Hostages' claims as untimely, on the pleadings alone. In the court's view, it mattered little that,

among Chase's many deceptions, Reed had given false testimony to congressional investigators and duped Congress into concluding that Chase played no part in delaying the hostage's release. The District Court held that the claims against Chase accrued upon the Hostages' release in 1981—it mattered little that the hostages had no way of knowing that Chase had caused them months of continued torture. The District Court also held that the statute of limitations was not tolled, despite Chase's decades-long effort to cover its tracks.

The District Court's holding stripped equity from the doctrines of discovery accrual, equitable tolling, and equitable estoppel. The blueprint for would-be defendants is clear: make sure your wrongdoing is "almost entirely invisible," and then wait out the clock. The question in this case is simple: should Chase, on a motion to dismiss, get the benefit of its decades of deception and concealment? Or is it not too late for the Hostages to get justice?

JURISDICTIONAL STATEMENT

The District Court had subject-matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because it is a class action involving claims of citizens of multiple states in which the aggregate amount in controversy exceeds $5,000,000; there are dozens of class members; and Chase is a citizen of New York, a state that is different than more than one Plaintiff and class member. The District Court also had jurisdiction over the class's claims arising under 42 U.S.C.

§ 1985(1) pursuant to 28 U.S.C. § 1331. In addition, the District Court had jurisdiction over the class's pendent state-law claims pursuant to 28 U.S.C. § 1367(a).

This Court has jurisdiction over this appeal under 28 U.S.C. § 1291 because the District Court's February 26, 2021 order granting Chase's motion to dismiss disposed of all the parties' claims. Opinion at 32. The Hostages timely filed their notice of appeal on March 9, 2021. J.A. ____ (Notice of Appeal, Dkt. No. 58); *see also* FRAP 4(a)(1).

ISSUES PRESENTED

1. Under the diligence-discovery rule, federal claims accrue when a plaintiff discovers both the fact of injury and its cause. The Amended Complaint alleges, and must be credited as true, that on December 29, 2019, the Hostages learned that Chase had sabotaged the 1980 hostage release talks and prolonged their captivity. Did the Hostages' 42 U.S.C. § 1985(1) claims for conspiracy to injure federal officers accrue upon that discovery?

2. Under the federal equitable-tolling doctrine, a statute of limitations is tolled if, despite all due diligence, a plaintiff is unable to obtain vital information bearing on the existence of his claim. The Amended Complaint alleges, and must be credited as true, that the Hostages did not and could not have known that Chase

had prolonged their captivity until December 2019, when unsealed records revealed this long-kept secret. Are the 42 U.S.C. § 1985(1) claims equitably tolled?

3. Under New York's equitable estoppel doctrine, a defendant is estopped from raising a time-bar defense when that defendant's affirmative wrongdoing resulted in the plaintiff's delay. Under the allegations of the Amended Complaint, credited as true, is Chase equitably estopped from asserting the statute of limitations in defense of the Hostages' state-law claims?

STATEMENT OF THE CASE

I. Factual Background

A. The 444 days of the Iran Hostage Crisis.

In January 1979, Iran experienced ever increasing street protests against its ruler—Shah Mohammed Reza Pahlavi. J.A. __ (Amended Complaint ("AC"), Dkt. No. 39 ¶ 31). Because the Shah was a close ally of the United States, the Americans who staffed the United States Embassy in Tehran, primarily State Department and military personnel, watched the growing street protests in fear for their safety. J.A. __ (*Id.* ¶ 32). Embassy staff's apprehension grew as the street protests expanded in volume and vehemence, and the Shah left the country in January 1979 for a "vacation," first in Egypt, then Morocco, and eventually Mexico. J.A. __ (*Id.* ¶ 32).

The Americans worst fears were realized on February 14, 1979, when a street mob armed with machine-guns scaled the Embassy walls and took the staff hostage.

J.A. __ (*Id.* ¶ 35). Iranian revolutionary leaders eventually called off the raid, but all knew the invasion could happen again. J.A. __ (*Id*. ¶ 35). More attacks followed on the U.S. Consulates in Tabriz and Isfahan, where a mob seized a Consul and strung a rope around his neck. J.A. __ (*Id*. ¶ 46).

Throughout the spring and summer of 1979, Americans at the Embassy in Tehran watched as the Shah moved from country to country in search of safe harbor. J.A. __ (*Id*. ¶ 32). The higher-ranking Embassy officials repeatedly warned the State Department that admitting the Shah to the United States likely would spark another invasion of the Embassy and another round of hostage taking. J.A. __ (*Id*. ¶ 45). The Americans therefore were shocked to learn on October 22, 1979 that the Shah had been flown to New York City for medical treatment. J.A. __ (*Id.* ¶ 52).

Less than two weeks later, on November 4, 1979, Iranian revolutionaries—now in control of the government under Ayatollah Khomeini—seized the Embassy in retaliation for the Shah's admission into United States. J.A. __ (*Id.* ¶ 55). They took 66 Americans hostage and demanded that the United States turn the Shah over to Iran as the price for the hostages' release. J.A. __ (*Id.* ¶ 56).

Most observers thought that the Iranian Hostage Crisis, as it was termed, would be short lived. They were wrong. A very small group of hostages were released, but 52 Americans remained hostages for 444 days. J.A. __ (*Id.* ¶ 55). Their captors inflicted physical and psychological torture, subjecting them to beatings,

prolonged solitary confinement, brutal interrogations, and constant threats to them and their families. J.A. __ (*Id.* ¶ 59).

Aside from a trickle of details from their captors, the hostages had no idea what was happening outside their prison walls. In November 1980, Plaintiff Colonel David Roeder was informed by a captor that the hostage takers had successfully prevented President Carter's re-election. J.A. __ (*Id.* ¶ 60). The Hostages thought they would be released then, but they were not. Freedom did not come until January 20, 1981—the day that Ronald Regan was inaugurated as the President of the United States. J.A. __ (*Id.* ¶ 78).

That final extension of their captivity destroyed their hope. J.A. __ (*Id.* ¶ 61). It caused and exacerbated lifelong physical and psychological trauma for the Hostages and their family members. *Id.* Many would go on to suffer premature deaths, estrangement between spouses and children, and a number of diagnosed and continuing cases of PTSD. *Id.*

B. Unanswered Questions: Years of Misdirection Surrounding Chase's Role in the Iran Hostage Crisis.

In the three years that followed their release—the time the District Court determined to be the statute of limitations period—the Hostages' lives needed to be rebuilt; families reunited; bodies and minds healed—to the extent they ever could be. *See* J.A. __ (*Id.* ¶¶ 58–69). And questions needed to be answered. But how? After 444 days of captivity, the Hostages knew only the obvious. They only knew the

identities of their hostage-takers, and based on the limited information gleaned through captivity, they knew that the Shah's admission to the United States had precipitated the Embassy seizure. *See* J.A. __ (*Id.* ¶ 56). But why did the United States government admit the Shah despite unambiguous warnings it could prompt another Embassy seizure? And why did their captivity last so long? The few puzzle pieces out in the public domain offered no ready answers. Instead, the Hostages faced a cloud of ambiguity as to what led to the Embassy Seizure and what caused the long delay in their release.

1. Helping a "Friend": Chase Minimizes its Relationship with the Shah.

The Hostages' understanding of events was shaped by a May 17, 1981 New York Times article titled "Why Carter Admitted the Shah."[2] *See* J.A. __ (*Id.* ¶ 9). The *Times* reported that for months, "influential private citizens," including Chase Manhattan Bank chairman Rockefeller, had lobbied the Carter Administration to admit the Shah. Terence Smith, "Why Carter Admitted the Shah," 1981 *New York Times* Article (cited at J.A. __ (AC ¶ 9)). This lobbying campaign, according to the *Times*, was conducted by an "old-boy network" including Reed; Henry Kissinger; and Chase's attorney John J. McCloy. J.A. __ (*Id.*).

[2] Terence Smith, "Why Carter Admitted the Shah," *New York Times*, May 17, 1981, https://www.nytimes.com/1981/05/17/magazine/why-carter-admitted-the-shah.html ("1981 *New York Times* Article").

Based on the information available at the time, the Hostages could only have known that this "old-boy network" engaged in First Amendment protected advocacy as elder statesmen of foreign affairs—an image carefully cultivated by Chase. According to Rockefeller, he merely raised the Shah's admission as a side comment to President Carter in April 1979:

> I had some other matters I wanted to discuss with the President, and as we stood up, at the end of the conversation, I told him of my concern that a friend of the United States should be treated in such a way and said I felt he should be admitted and we should take whatever steps were necessary to deal with the threats (to the Teheran embassy). I didn't tell him how to deal with it, but I said it seemed to me that a great power such as ours should not submit to blackmail.

J.A. __ (*Id.*).

McCloy "peppered top officials in the State Department and White House with letters." J.A. __ (*Id.*). Kissinger placed calls with the President and his chief foreign policy advisors. J.A. __ (*Id.*). On the face of it, this was nothing more than independent advocacy to help a "friend," as Rockefeller called the Shah. J.A. __ (*Id.*). But, according to the *Times*, that lobbying campaign failed to persuade Carter: "Exactly how much the efforts of the old-boy network ultimately influenced the President's decision to admit the Shah is hard to gauge. 'Not much,' Carter replied . . . ." J.A. __ (*Id.*).

Rather, it was one key piece of information that made the difference. According to the *Times*, Carter admitted the Shah because he had been "told that the Shah was desperately ill, at the point of death" and that "New York was the only

medical facility that was capable of possibly saving his life." J.A. __ (*Id.*). That information was false. But who had lied to Carter?

The Administration's "sole source of information" on the Shah's health was a doctor, Benjamin Kean, who had been retained by Reed to examine the Shah in Mexico. J.A. __ (*Id.*). On October 18, 1979, Reed informed the State Department that the Shah had been diagnosed with cancer. Later, a State Department medical officer consulted with Dr. Kean and reported back to the State Department. J.A. __ (*Id.*). President Carter told the *Times* that he had been informed that "the medical equipment and treatment the Shah was required was available only in New York." J.A. __ (*Id.*). But Dr. Kean, Chase's agent, denied that he had stated that the Shah's life could only be saved through medical treatment in New York. J.A. __ (*Id.*). "Thus, on two counts, Carter was apparently misinformed about what Dr. Kean had actually proposed." J.A. __ (*Id.*).

Thus, in 1981, the year of their release, the Hostages would have learned that Chase had failed to lobby Carter to admit the Shah. Carter had refused to do so, until *someone* misled him into believing that admitting the Shah was the only way to save his life. And that *someone* was not Chase's physician Dr. Kean, nor did it appear to be Reed, who had earlier conveyed the Shah's cancer diagnosis.

As for Chase's role, this was the public record at the time. There was *nothing* in the 1981 *New York Times* Article revealing that Chase was in any way linked to *prolonging* the Hostages' captivity until January 1981.

In the ensuing decades, the Hostages worked together to seek answers and seek justice. In the summer of 1981, former Hostage Moorhead Kennedy was able to meet Rockefeller and ask about his dealings with the Shah: Rockefeller stated that he barely knew him. J.A. __ (AC ¶ 81.b).

Rockefeller's denials continued for years. In his 2002 *Memoirs*, he claimed that apart from a side comment at an April 1979 meeting with President Carter, he "did nothing more publicly or privately to influence the administration's thinking." J.A. __ (*Id.* ¶ 81.a). His denial was explicit: "despite the insistence of journalists and revisionist historians, there was never a 'Rockefeller-Kissinger behind-the-scenes campaign' that placed relentless pressure on the Carter administration to have the Shah admitted to the United States regardless of the consequences." J.A. __ (*Id.*). Chase even misrepresented its financial interests in the Pahlavi monarchy: Rockefeller told the *Times* in 1981, "There may have been small accounts of convenience, but they had no real significance." J.A. __ (*Id.* ¶ 81.c).

2. The "October Surprise": Chase Denies Participating in any Effort to Prevent the Hostages' Release.

Why the Hostages' release was delayed until Inauguration Day in 1981 remained an even greater mystery. Nothing in the *New York Times'* 1981 article gave any clue that Chase had impeded their release. For years, rumors circulated around Washington, D.C. that the Reagan Campaign had struck a backdoor deal with the hostage-takers to delay the Hostages' liberation.

But in the early 1990s, Congress investigated and debunked these so-called "October Surprise" allegations and declared the case closed. In its 982-page Report, released in January 1993, the House October Surprise Task Force concluded that "wholly insufficient or no credible evidence exists to substantiate the allegations that form the October Surprise theory." J.A. __ (*Id.* ¶ 83).[3] The House report specifically cleared Chase of any involvement. It concluded that Rockefeller had merely "lobbied the Carter Administration to allow the Shah to come to the United States." J.A. __ (*Id.* ¶ 81.f.(1)). And determined that Chase "and the Rockefellers" were not "the Republicans who figure prominently in the October Surprise scenario." J.A. __ (*Id.* ¶ 81.f.(3)). It would have been hard to conclude otherwise—under a congressional subpoena, Reed stated (falsely, the Hostages would later learn) that he

[3] *Joint Report of the Task Force to Investigate Certain Allegations Concerning the Holding of American Hostages By Iran in 1980 ("October Surprise Task Force")*, H. Rept. No. 102–1 (102d Cong. 2d Sess. 1993).

did not even know what the term "October Surprise" referred to and denied having met with Reagan Campaign Chair William Casey in 1980. J.A. __ (*Id.* ¶ 81.e.(2)-(3)). The Senate Special Counsel's 322-page report on the "October Surprise" allegations does not once mention Chase Manhattan Bank, Rockefeller, or Reed. J.A. __ (*Id.* ¶81.f). Relying on the investigative efforts of Congress and the FBI, the Hostages did not know they had any cause of action against Chase.

Given this record of denials, the Hostages had no reason to believe that Chase had done anything more than lobby the Administration—with limited to no effect. So from 1984 to 2012, the Hostages doggedly pursued claims against the only perpetrator they were aware of: Iran. *See Persinger v. Islamic Republic of Iran*, 729 F.2d 835 (D.C. Cir. 1984); *McKeel v. Islamic Republic of Iran*, 722 F.2d 582 (9th Cir. 1983); *Ledgerwood v. State of Iran*, 617 F. Supp. 311 (D.D.C. 1985); *Roeder v. Islamic Republic of Iran*, 195 F. Supp. 2d 140, 144 (D.D.C. 2002), aff'd, 333 F.3d 228 (D.C. Cir. 2003), *cert. denied*, 542 U.S. 915 (2004*); Roeder v. Islamic Republic of Iran*, 742 F. Supp. 2d 1 (D.D.C. 2010), *aff'd*, 646 F.3d 56 (D.C. Cir. 2011), *cert. denied*, 566 U.S. 1021 (2012).

The District of Columbia Circuit court noted:

> These hostages remained in Iranian custody for 444 days and were subjected to physical and mental torture and inhumane conditions of confinement. At the non-jury trial conducted in this case, former hostages testified about the treatment they endured. The hostages were often blindfolded and tied to chairs or other objects for prolonged periods of time. They were at times kept in isolation from one another,

> and denied the right to communicate with one another or their families. Several hostages recounted physical abuse, including being kicked, beaten, punched, walked blindfolded into obstacles such as trees, and being exposed with minimal clothing to the elements. The hostages were imprisoned in cold, dark locations, including prisons, and were given only minimal clothing, food, water, and medical care.
> Roeder v. Islamic Republic of Iran, 195 F. Supp. 2d 140, 146 (D.D.C. 2002), aff'd, 333 F.3d 228 (D.C. Cir. 2003).

At the non-jury trial, Colonel Roeder testified to his ordeal:

> The worst one, probably the absolute lowest moment in my life so far, was when the interrogator told me where my son lived, the address, what bus he took, what school he went to and the special education program, the actual route number, and explained that it would be an easy thing for them to kidnap him, and unless I signed the documents saying that I was a spy and not an air force officer working for a different agency, they would periodically send pieces of my son to my wife.
> Testimony of Col. David Roeder, Case No. 00-3110 (D.D.C. October 15, 2001) (EGS).

C. The Truth Emerges: In 2019, the New York Times Discovers Chase's Long-Concealed "Project Eagle" Papers.

During all these years, what the Hostages did not know, and could not have known, was that their suffering was the result of actions taken by a cabal within Chase Manhattan Bank and its associates who called themselves Project Eagle. That truth was finally revealed on December 29, 2019, when the New York Times published an article titled "How a Chase Bank Chairman Helped the Deposed Shah

of Iran Enter the United States," correcting a story it got wrong back in 1981. J.A. __ (AC ¶ 8).[4]

The New York Times learned this closely guarded information when it was tipped off that Reed had donated his papers to Yale University in 2012, to be kept under seal until the death of Rockefeller, who passed away on March 20, 2017. The tipper was Charles Francis, a PR specialist who worked with Chase and was a member of Project Eagle. J.A. __ (2019 *New York Times* Article).

1. The first 2019 revelation: Chase acted as an undisclosed foreign agent to restore the Pahlavi monarchy.

What the Iranian Hostages did not know, and could not have known until after December 2019, was that Francis and the group of men who comprised Project Eagle secretly acted as undisclosed agents of the Shah (who was still the Iranian Head of State). J.A. __ (AC ¶¶ 39–44). They were not just concerned about the Shah's comfort in exile; the Project Eagle conspirators sought a way to return him to the Peacock Throne. J.A. __ (*Id.* ¶ 39). The goal was to protect Chase's huge financial exposure in Iran without leaving any public trace of what they were doing. J.A. __ (*Id.* ¶¶ 38–40). As Francis later observed for the *Times*, "Today's corporate campaign are demolition derbies compared to this operation. It was

[4] David D. Kirkpatrick, "How a Chase Bank Chairman Helped the Deposed Shah of Iran Enter the U.S.," *N.Y. Times*, Dec. 29, 2019, https://www.nytimes.com/2019/12/29/world/middleeast/shah-iran-chase-papers.html (hereinafter "*2019 New York Times Article*").

smooth, smooth, smooth and almost entirely invisible." J.A. __ (2019 *New York Times* Article).

Now that Project Eagle was visible, the cloud of ambiguity lifted from the events leading to the Shah's admission. For the first time since the New York Times' 1981 investigation, it became clear that the Shah's supposed end of life diagnosis had been ginned up by Reed and Rockefeller to further Project Eagle's plans for the Shah's restoration. *See* J.A. __ (AC ¶¶ 48–53). This fact emerged only in 2019, when Chase meeting minutes revealed: "Why was the Shah admitted? 'Medical treatment/DR recommended . . . This association cannot be ignored." J.A. __ (2019 *New York Times* Article).

2. The second 2019 revelation: Chase prevented the Hostages' release by sabotaging President Carter's negotiations with Iran.

Project Eagle's restoration plans suffered a severe setback in July 1980 when the Shah died, although his son's claim to the throne still provided an avenue for the restoration Project Eagle sought to achieve. However, the cabal had an additional mission that dove-tailed with its initial mission. It aimed to defeat Jimmy Carter and elect a more pliable President by preventing a so-called "October Surprise," *i.e.*, the release of the Iranian Hostages during the fall campaign season. J.A. __ (AC ¶¶ 74—76). This goal and the means used to accomplish it did not become public until the 2019 New York Times Article.

According to Reed's papers, as recounted in the *Times*, he and other members of Project Eagle "helped the Reagan campaign gather and spread rumors about possible payoffs to win the release, a propaganda effort that Carter officials have said impeded talks to free the captives." J.A. __ (2019 *New York Times* Article). In a letter to his family after the election, Reed wrote, "I had given my all" to thwarting any effort by the Carter officials "to pull off the long-suspected 'October surprise'" by releasing the Hostages. 2019 *New York Times* Article. Reed was not alone. The *Times* revealed that even as late as December 1980, Chase chairman Rockefeller's goal was to stop—in his words—"rug merchant type bargaining" for the hostages' release. J.A. __ (*Id.*).

Before 2019, the Hostages knew that Congress had absolved Chase of any role in the October Surprise affair and that Reed had denied any knowledge or involvement. Now, in December 2019, they discovered that it was all a lie. The Hostages finally learned what had caused them to languish in captivity for months beyond the Shah's death on July 27, 1980 and President Carter's electoral defeat in November 1980—Chase's machinations to prevent their release.

3. The third 2019 revelation: Chase concealed its conspiracy continuously from 1979 until the death of David Rockefeller on March 20, 2017.

The Reed papers revealed that while Project Eagle's actions were, in the word of Charles Francis "almost entirely invisible," the members of the cabal were

careful to cover up their actions by affirmatively misdirecting anyone who got close enough to unravel the threads.

The first means of misdirection was to conceal the very existence of Project Eagle by failing to register as foreign agents as required by federal law. J.A. __ (AC ¶ 44). Disclosing this role would have invited closer examination of Chase's "lobbying," in particular Chase's role in delivering the Shah's supposedly death's-door diagnosis.

The second means of misdirection was to minimize and misrepresent publicly the relationship between Rockefeller/Chase on one hand and the Shah on the other. As revealed by the *Times* in 2019, this coverup was discussed at a Chase dinner held in August 1980 where "some warned that a Rockefeller link to the embassy seizure would be hard to escape." J.A. __ (2019 *New York Times* Article). These revelations put the lie to Rockefeller's 1981 statements to former Hostage Moorhead Kennedy and the New York Times, disavowing any relationship with the Shah. And they revealed the falsity of Rockefeller's outright denial of the xistence of Project Eagle in his 2002 memoirs. *See* J.A. __; ___ (AC ¶ 81.a).

The third means of misdirection was to deceive federal investigators and hide incriminating evidence by keeping the Reed papers under seal at Yale. As the 2019 New York Times article revealed, back in 1980, former Secretary of State Henry Kissinger, a Project Eagle member, tried to reassure Rockefeller by

predicting that Congress would never investigate the Hostage Crisis during an election campaign. J.A. __ (2019 *New York Times* Article). When that investigation finally came, more than a decade later, Chase's coverup continued. Reed falsely disavowed any knowledge of the "October Surprise" conspiracy under oath. J.A. __ (AC ¶ 81.e.(2)). Reed then ensured that no one would discover his perjury in his or Rockefeller's lifetime, bequeathing his papers to Yale under seal. J.A. __ (*Id.* ¶ 81(g)). Absent Francis' burst of conscience, the Hostages (and the world) still would not know what Chase had done to provoke and then prolong their captivity.

The Reed papers revealed another telling detail. In a prescient moment, Kissinger reassured Rockefeller in 1980: "I don't think we are in trouble any more, David." J.A. __ (2019 *New York Times* Article). He was right: the coverup succeeded. Not only did it succeed in delaying for almost 40 years the public disclosure of Chase's perfidy, the delay it caused also provided Chase with a vehicle to avoid being held accountable for causing harm to befall American officials stationed overseas.

II. Proceedings Below

The plaintiffs-appellants in this action are former Hostages and their family members, acting in their individual capacity and as a representative of a putative class of all former Hostages, as well as their estates and family members. They

filed their initial complaint on March 18, 2020, within three months of the publication of the 2019 New York Times article, and within three years of the death of Rockefeller on March 20, 2017, when the seal ostensibly was lifted on the Reed papers at Yale University. J.A. __ (Dkt. No. 1).

The Hostages filed an Amended Complaint as of right on June 26, 2020, alleging that Chase, acting through Project Eagle, conspired to injure federal officers, in violation of the Civil Rights Act, 42 U.S.C. § 1985(1), and intentionally prolonged the Hostages' kidnapping by sabotaging the Carter Administration's negotiations. J.A. __ (Dkt. No. 39). The Hostages also alleged negligence and intentional torts under New York law, arising from Chase's reckless provocation of the embassy seizure by fraudulently procuring the Shah's admission to the United States and by deliberately extending the Hostages' false imprisonment.

The case was heard by Judge Lewis J. Liman of the U.S. District Court for the Southern District of New York. J.A. __ (Plaintiffs-Appellants appeal from the Opinion and Order of Judge Liman, Roeder v. J.P. Morgan Chase & Co., No. 20-cv-2400 (LJL), 2021 WL 797807 (S.D.N.Y. Feb. 26, 2021), Dkt. No. 54).

The district court granted Chase's Motion to Dismiss, holding that the Hostages' federal and state-law claims were untimely. J.A. __ (*Id.* at *14). The District Court first held that all claims accrued on the day of the Hostages' release—January 20, 1981. J.A. __ (*Id.* at *7). The District Court then held that the

statute of limitations was not tolled by Chase's affirmative and repeated coverup of its actions. J.A. __ (*Id.* at *9).

SUMMARY OF ARGUMENT

I. This Court should reverse the District Court's determination that Count I, the Hostages' Section 1985(1) claims, accrued upon their release on January 20, 1981 for two reasons. *First*, the District Court misapplied long established precedent holding that a federal claim does not accrue until a plaintiff discovers both the fact of injury and who or what caused that injury. Instead, the court reasoned that because the Hostages knew the fact of their injuries on the day they were released, it did not matter that they remained ignorant of what Chase did to cause those injuries. *Second*, that reasoning suffered from an equally flawed factual finding, which is not the province of a motion to dismiss under Fed. R. Civ. P. 12(b)(6). The District Court overlooked the gravamen of Count I—that Chase caused the Hostages to suffer months of extended captivity by sabotaging the hostage negotiations. None of these facts were reported by the *Times* in the 1981 article. That article could not have put the Hostages on inquiry notice, as the District Court erroneously found.

II. The District Court also committed reversible error by mistaking the standard for equitable tolling under federal law. The District Court required a showing of affirmative misconduct by the defendant. But this Court's precedent

makes clear that no affirmative misconduct is required, so long as special circumstances rendered the plaintiff unable to obtain vital information bearing on the existence of her claim. The District Court failed to consider whether such special circumstances—notably, Reed's obstruction of congressional investigations and sealing of the Project Eagle papers—were present in this case.

III. Finally, the District Court erred in applying the New York doctrine of equitable estoppel to the state law claims. Relying on a flawed reading of the New York Court of Appeals' case law, the District Court mistakenly concluded that equitable estoppel could only rest on false statements made directly to plaintiffs. The District Court then made the same errors as before, conflating Chase's two distinct courses of conduct—negligently provoking the Embassy takeover and then intentionally prolonging the captivity. This error led the District Court to confuse distinct causes of action and theories of liability and overlook how Chase's affirmative acts of concealment prevented the Hostages' from possessing the distinct facts needed to pursue those distinct claims.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's ruling on a motion to dismiss. *Kassner v. 2nd Ave. Delicatessen Inc.*, 496 F.3d 229, 237 (2d Cir. 2007). *De novo* review also applied to a "district court's interpretation and application of a statute of limitations" including determinations of claim accrual and the discovery rule.

Levy v. BASF Metals Ltd., 917 F.3d 106, 108 (2d Cir. 2019). "On an appeal from a district court's denial of equitable tolling," the Court reviews "findings of fact for clear error and the application of legal standards *de novo*." *Harper v. Ercole*, 648 F.3d 132, 136 (2d Cir. 2011); *see Belot v. Burge*, 490 F.3d 201, 206 (2d Cir. 2007).

In reviewing a motion to dismiss, the Court must construe the complaint liberally, "accepting as true all factual claims in the complaint and drawing all reasonable inferences in the plaintiff's favor." *Gelboim v. Bank of Am. Corp.*, 823 F.3d 759, 769 (2d Cir. 2016). In ruling on a motion to dismiss, a court is not to engage in fact finding. And where, as here, the motion seeks judgment upon the affirmative defense of the statute of limitations, the movant bears the burden of proving the limitation solely from facts alleged within the four corners of the complaint. *Ellul v. Congregation of Christian Bros.*, 774 F.3d 791, 798 n.12 (2d Cir. 2014); *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007).

I. THE DISTRICT COURT ERRED IN DISMISSING THE HOSTAGES' FEDERAL CLAIM AS UNTIMELY

Count I of the Amended Complaint alleges a conspiracy to impede or injure an officer of the United States. The federal statute upon which this claim is based makes it unlawful, in part, for

> two or more persons in any State or Territory [to] conspire to prevent, by force, intimidation, or threat, any person . . . from discharging any duties [in an office,

> trust, or place of confidence under the United States] . . . or to injure [any officer of the United States] in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof.

42 U.S.C. § 1985(1).

The paragraphs that compose Count I allege that (1) the Hostages were officers of the United States before and during their captivity, J.A. __ (AC ¶¶ 55–68), and (2) the members of Project Eagle combined and conspired with each other to prolong the Hostages' captivity by "disseminating false rumors about the Carter Administration's negotiations that were intended to and did actually, sabotage and impede the Hostage Talks and delay the release of the Hostages." J.A. __ (*Id.* at ¶ 108).

The Hostages' Section 1985 claim is subject to a three-year statute of limitations borrowed from New York state law. *Paige v. Police Dep't of the City of Schenectady*, 264 F.3d 197, 199 n.2 (2d Cir. 2001) (per curiam). While state law supplies the statute of limitations, federal law determines when a Civil Rights Act claim accrues. *See Veal v. Geraci*, 23 F.3d 722, 724 (2d Cir. 1994).

The District Court ruled that the limitations period began to run on January 20, 1981—the date on which the Hostages were released. It reasoned the Hostages knew the fact of their injuries on that date, so it did not matter that they remained ignorant of what Chase did to cause those injuries *Roeder*, 2021 WL 797807, at *7.

In making this ruling, the District Court disregarded long established precedent holding that a plaintiff does not "discover" his injury for statute of limitations purposes until he knows both the fact of injury and who and what caused that injury. [5] In addition, the District Court misread Count I of the Amended Complaint. The factual gravamen of Count I is not the Embassy takeover. This Count alleges that the Project Eagle and Chase conspirators prolonged the Hostages' captivity by deliberately sabotaging the Carter Administration's negotiations for the Hostages' freedom.

A. A federal claim does not accrue until a plaintiff knows both the fact of his injury *and the cause* of that injury.

Federal courts apply a "discovery accrual rule" when a federal statute, such as the Civil rights Act, does not address when its limitations period is to begin. *Rotella v. Wood*, 528 U.S. 549, 555 (2000) The United States Supreme Court and this Court have repeatedly held that this discovery accrual rule— which is also

[5] The District Court also erred in finding that the Hostages had "abandoned" this argument—that finding is belied by the eight pages of the court's Opinion devoted to the issue. J.A. __ (Dkt. No 54 at 10–17). The Hostages specifically pleaded that their claims "accrued on December 29, 2019" when they discovered the "critical facts revealing that Chase had inflicted injuries upon them," J.A. __ (AC ¶ 106), and argued in their briefing that the "Project Eagle papers revealed that Chase . . . really did conspire to . . . delay the Hostages' release."), J.A. __ (Pls.' Mem., Dkt. No. 48 at 29). Regardless, "[a]rguments made on appeal need not be identical to those made below, . . . if the elements of the claim were set forth and additional findings of fact are not required." *Vintero Corp. v. Corporacion Venezolana de Fomento*, 675 F.2d 513, 515 (2d Cir. 1982) (per curiam). There is clearly a record for this Court to review.

known as the "diligence-discovery rule of accrual," *see Valdez ex. rel. Donely v. United States*, 518 F.3d 173, 177 (2d. Cir. 2008)—requires more than knowledge of the fact of injury. The statute of limitations does not begin to run until the plaintiff also knows who and what caused his injury. *Rotella*, 528 U.S. at 555; *A.Q.C. ex rel. Castillo v. United States*, 656 F.3d 135, 140 (2d. Cir. 2011) ("The diligence-discovery rule sets the accrual date at the time when with reasonable diligence the plaintiff has or … should have discovered the critical facts of both his injury and its cause."); *Valdez*, 518 F.3d at 177 ("[W]here plaintiff would reasonably have had difficulty discerning the fact or cause of injury at the time it was inflicted, the so called 'diligence-discovery rule of accrual' applies. Under this rule, accrual may be postponed until plaintiff has or with reasonable discovery should have discovered the critical facts of both his injury and its cause.")

In *United States v. Kubrick*, 444 U.S. 111 (1979) the Supreme Court explained the reason for requiring knowledge of causation before starting the clock on the statute of limitations:

> We are unconvinced that for statute of limitations purposes a plaintiff's ignorance of his legal rights *and his ignorance of the fact of injury or its cause* should receive identical treatment. That he has been injured in fact may be unknown or unknowable until the injury manifests itself; *and the facts about causation may be in 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.*

Id. at 122 (emphasis added).

This court's decision in *Barrett v. United States*, 689 F.2d 324 (2d. Cir. 1982) illustrates the diligence discovery rule of accrual as applied to causation. *Id.* at 327-28. The plaintiff in that case was the Administrator of an estate that brought suit under the Federal Tort Claims Act and 42 U.S.C. § 1983. Her Complaint, which was filed in 1975, alleged that in the 1950s the estate's decedent died after being injected with a mescaline derivative while serving as an unknowing test subject in a chemical warfare experiment. The Army kept this information hidden for approximately 25 years before it was declassified. *Id.*

After extensive discovery, the district court dismissed the case on statute of limitations grounds. This Court reversed. Judge Cardamone, who wrote for the Court began by noting:

> The diligence-discovery rule of accrual is not often applied outside the medical malpractice area, but may be appropriate in non-malpractice cases where plaintiffs face comparable problems in discerning the fact and cause of their injuries. Thus, any plaintiff who is blamelessly ignorant of the existence of the cause of his injury should be accorded the benefits of the more liberal accrual standard.
>
> For example, the diligence-discovery rule has been applied where a plaintiff demonstrates that his injury was inherently unknowable at the time he was injured and where the Government conceals its negligent acts so the plaintiff is unaware of their existence."

Id. at 327 (citations omitted).

Judge Cardamone noted that the estate knew the fact of injury when it occurred in the 1950s because the decedent had perished. However, the estate did not know that the Army caused the death by using the decedent as a human guinea pig. A review of the record developed below caused Judge Cardamone to find:

> Thus, critical facts about causation and who inflicted [decedent's] injury were in the control of the government and very difficult for his estate to obtain. Indeed, the evidence indicates that some critical facts, such as identity of the tortfeasor and the purpose for administering the drug, would not have been revealed no matter how diligently the estate had pursued its case in the 1950s.

Id. at 329. This Court therefore reversed summary judgment and ordered a trial because there were factual disputes "both as to whether diligence was employed by the estate without success and whether the role of the Army Chemical Corps would in any event have been revealed." *Id.* at 330.

The Hostages today face a situation similar to that which confronted the Administrator in *Barrett v. United States.* As their captivity dragged on and on, for 444 days total, the Hostages knew that they were being falsely imprisoned each day, but they did not know why it was taking so long to secure their release. It was only in December 2019 that the Hostages learned what had caused their captivity to be prolonged—the members of Project Eagle had used nefarious means to deliberately sabotage the Carter Administration's hostage release negotiations. J.A. __ (AC ¶¶ 75–76).

As in *Barrett v. United States*, it is a question of fact whether the Hostages could have discovered through the exercise of due diligence the existence of Project Eagle and its coordinated acts of sabotage. The facts relevant to this particular claim do not include the actions that Rockefeller, Kissinger and McCloy undertook to gain the Shah's admission into the United States. Rather, they focus exclusively on Chase's success in blocking an "October Surprise"—and those facts were not aware to the Hostages. In fact, the secrecy surrounding this portion of Chase's activities was so carefully maintained that even Congress could not discover it. As alleged in paragraph 81 of the Amended Complaint, Project Eagle conspirator Reed, lied to Congress about his sabotage of the hostage release negotiations and neither the House nor the Senate investigative committees were able to uncover any evidence of the truth. It was not until December 2019 that this Chase state secret was revealed. If Congress—with its vast investigative powers and unlimited budget—could not uncover Project Eagle's existence or acts of sabotage, there is no reason to presume that the Hostages would have been more successful.

By considering only the fact of injury and not who and what caused that injury, the District Court failed to apply the full measure of the diligence-discovery rule of accrual. It compounded this error by not addressing the factual allegations specific to Count I of the Amended Complaint. The District Court applied the

diligence-discovery rule to the 1979 Embassy takeover, not to Chase's sabotage of the hostage negotiations in 1980. *See* J.A. __ (*Roeder*, 2021 WL 797807, at *7) (holding that the injury for purposes of the Section 1985(1) claim "was suffered, and the hostages knew of it, *when the hostages were first imprisoned* . . . .") (emphasis added).

But the Hostages do not allege that Chase violated Section 1985(1) with respect to the initial hostage-taking: no facts in the record thus far show that Chase intended for the Americans in Tehran to be seized or conspired with the hostage takers. Rather, Chase violated Section 1985(1) later, after the Hostages were seized, when it sabotaged the hostage talks throughout 1980 and intentionally prolonged the Hostages' captivity. That injury—additional months of confinement and torture—occurred later and its cause was only discovered by the Hostages in 2019.

The District Court also considered the wrong set of facts when it held that the Hostages had not exercised due diligence to investigate their potential Section 1985(1) claims against Chase, apparently because there had been contemporaneous press articles that described the bank's lobbying to get the Shah admitted into the United States. *Id.* at *7 ("When the hostages were released from captivity, they knew enough to protect themselves by seeking advice."). But those articles did not reveal a single detail about Chase's "October Surprise" conspiracy.

The District Court thus made an improper factual finding that the hostages learned enough about their 1985(1) claim from the 1981 *New York Times* Article to pursue claims against Chase. *Id.* The Amended Complaint alleges the opposite, and the court had no reasonable basis to infer that the Hostages had sufficient knowledge from an article that not once mentioned Chase impeding the hostage release negotiations.

Not only was this factual finding improper on a motion to dismiss, but it was also irrelevant to the allegations of Count I of the Amended Complaint. That Count is limited to what Chase did in the fall of 1980 to keep the Hostages in captivity for many additional months, not what caused the Embassy takeover in the first place.

In sum, the District Court applied the wrong standard to the wrong facts to conclude as a matter of law that the Section 1985 claim alleged in Count I accrued on January 20, 1981—the day the Hostages were released. The District Court's judgment of dismissal as to Count I should be reversed.

B. The doctrine of equitable tolling makes the Hostages' federal claim timely even if it accrued before December 2019.

"Equitable Tolling permits a plaintiff to avoid the bar of the statute of limitations 'if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim.'" *Valdez,* 518 F.3d at 182 (quoting *Cada v. Baxter Healthcare Corp*., 920 F.2d 446, 451 (1990). Unlike the state doctrine of equitable estoppel, equitable tolling "does not assume a wrongful—or any—effort

by the defendant to prevent the plaintiff from suing." *Id.*; *accord, Veltri v. Bldg. Servs. 32B-J Pension Fund*, 393 F.3d 318, 323 (2d Cir. 2004) ("The relevant question is not the intention underlying the defendants' conduct, but rather whether a reasonable plaintiff in the circumstances would have been aware of the existence of a cause of action."); *Canales v. Sullivan*, 936 F.2d 755, 758 (2d Cir. 1991) ("[T]his court has rejected the position that equitable tolling is permissible only in misconduct cases.").

Veltri v. Building Services, illustrates equitable tolling at work. The plaintiff in that ERISA case filed suit eleven years after being denied benefits and five years after expiration of the statute of limitations. This Court applied equitable tolling to allow the case to go forward because the defendant failed to comply with a federal regulation requiring that a notice of adverse determination advise the claimant of his right to bring suit. The failure to comply with this regulation established *special circumstances* that warranted equitable tolling. *Veltri*, 393 F.3d at 324 (emphasis added).

Similarly, in *Valdez ex. rel. Donely v. United States*, this Court held that the government's failure to promulgate a regulation informing patients that their doctor was an employee of HHS created "a special circumstance that may warrant equitable tolling, even absent fraudulent concealment." 518 F.3d at 183. The court

vacated the district court's dismissal on statute of limitations grounds and remanded the case for discovery.

As discussed above, Chase violated federal law by not filing a FARA disclosure that would have put the world on notice that it was acting as an agent for the Iranian monarchy. J.A. __ (AC ¶ 44). And it conducted Project Eagle so far out of the public eye that it was "almost entirely invisible." J.A. __ (2019 *New York Times* Article). Even Congress was unable to learn the truth. J.A. __ (AC ¶ 81.f). Under these circumstances, equitable tolling should be applied to allow the Hostages to pursue a federal claim against Chase that they could not have known they possessed until a co-conspirator finally came clean.

II. THE DISTRICT COURT ERRED IN DISMISSING THE HOSTAGES' STATE-LAW CLAIMS AS UNTIMELY

Counts II through IX of the Amended Complaint allege a variety of New York common law torts. As with Count I, the District Court held that the limitations period for these claims was three years and began to run on the date of the Hostages release, *i.e.*, January 20, 1981. The Hostages do not challenge this ruling on appeal.

The Hostages instead contend that their common law claims are timely because Chase should be estopped from relying upon the statute of limitations. New York courts:

> have long had the power, both at law and at equity, to bar the assertion of the affirmative defense of Statute of Limitations where it is the defendant's affirmative wrongdoing . . . which produced the long delay between the accrual of the cause of action and the institution of legal proceedings.

Zumpano v. Quinn, 6 N.Y.3d 666, 673 (N.Y. 2006) *(quoting Gen. Stencils, Inc. v. Chiappa*, 18 N.Y.2d 125, 128 (N.Y. 1966). This doctrine of equitable estoppel flows from the "principle that a wrongdoer should not be able to take refuge behind the shield of his own wrongdoing." *Gen. Stencils*, 18 N.Y.2d at 127.

Even though equitable estoppel is a question of fact rather than law, *McIvor v. Di Benedetto*, 121 A.D.2d 519, 523 (N.Y. App. Div. 1986), the District Court did not allow the parties to develop a record. *Cf. Bill Diodato Photography LLC v. Avon Prods., Inc.*, No. 12 Civ. 847 (RWS), 2012 WL 3240428, at *7 (S.D.N.Y. Aug. 7, 2012) (deferring ruling on equitable estoppel until after discovery); *Richey v. Hamm*, 78 A.D.3d 1600, 1602 (N.Y. App. Div. 2010) (deferring until after evidentiary hearing).

The District Court instead relied only on the parties' initial pleadings to find that the actions Chase undertook to hide its provocation and prolonging of the Hostage Crisis were not intended to induce the Hostages to delay or not file suit against the Bank. J.A. __ (*Roeder*, 2021 WL 797807, at *9). The District Court further found that the Hostages' reliance on Chase's deceptions was unreasonable

and that the Hostages could have and should have filed suit against Chase prior to expiration of the limitations period on January 20, 1984. J.A. __ (*Id.* at *12).

Both of these findings of fact were based on the existence of the 1981 *New York Times* Article that the District Court mistakenly concluded mirrored the Hostages' allegations in their Amended Complaint. J.A. __ (*Id.*). In doing so, the District Court failed to distinguish between the two distinct courses of improper conduct alleged in the Amended Complaint. The first was negligently provoking the Embassy takeover in November 1979. J.A. __ (AC ¶¶ 50–55). The second was intentionally prolonging the Hostages' captivity by sabotaging the Carter Administration's negotiations with Iran during the fall of 1980. J.A. __ (*Id.* at ¶¶ 74–78). Conflating these distinct facts and causes of action tainted the District Court's analysis of estoppel and is reversible error.

A. Chase kept the Hostages in the dark through a continuing course of lies, misdirection, and concealment.

The Amended Complaint details the misrepresentations and deceptions in which Chase engaged to coverup both prongs of its improper conduct.

1. Pre-1984 Conduct

Chase hid its wrongdoing from the outset. During the period between 1979 and 1984, Chase (including the members of Project Eagle) violated federal law by not registering as agents of the Pahlavi monarchy that it sought to restore to power. J.A. __ (AC ¶ 44). As discussed above, in 1981, Rockefeller lied about his true

relationship with the Shah, to the face of former Hostage Moorhead Kennedy and to the public through the *New York Times*, stating falsely that he barely knew the Shah and that Chase had no financial interests of consequence in the Pahlavi monarchy. J.A. __ (AC ¶ 81.b.–c.).

The District Court dismissed the significance of Chase's FARA violation as a mere failure to confess and noted that using it to toll the statute of limitations would have "breathtaking implications." J.A. __ (*Roeder*, 2021 WL 797807, at *10). It is true that normally a "wrongdoer is not legally obliged to make a public confession, or to alert people who may have claims against it, *Zumpano*, 849 N.E.2d at 930, but that is precisely what FARA required in this instance. Had Chase disclosed that it was working to restore the monarchy, the Hostages would have had reason to investigate further, rather than accept at face value Rockefeller and Kissinger's public image as mere foreign policy advocates.

The District Court dismissed the significance of Rockefeller's statements minimizing his and Chase's involvement with the Pahlavi monarchy reasoning that the Amended Complaint does not allege that Rockefeller made those statements directly to the plaintiffs-appellants and for the purpose of blocking or delaying any legal action they might file. J.A. __ (*Id.* at *11). The District Court based this conclusion on a mistaken belief that New York law does not recognize as actionable misleading statements made to the public. J.A. __ (*Id.*).

In *Zumpano v. Quinn*, the New York Court of Appeals rejected plaintiffs' claim because they had not "allege[d] any specific misrepresentation[s] to them by defendants *or any deceptive conduct sufficient to constitute a basis for equitable estoppel*." 6 N.Y.3d at 675 (emphasis added); *accord Twersky v. Yeshiva Univ.*, 579 Fed. Appx. 7, 8 (2d. Cir. 2014). As the italicized language makes clear, equitable estoppel can rest on conduct other than statements made directly to plaintiffs.

Any affirmative act that has the effect of disguising the existence of a cause of action against the defendant can constitute the conduct that gives rise to equitable estoppel. *See Rodriguez v. Morales*, 200 A.D.2d 406, 407 (N.Y. App. Div. 1994)("[T]he estoppel to plead the Statute of Limitations may arise without the existence of fraud or intent to deceive and the courts will apply the doctrine of equitable estoppel to prevent an inequitable use of such defense[s]."); *see also Veltri*, 393 F.3d at 323 ("While we have frequently referred to this doctrine as 'fraudulent concealment,' defendants' conduct need not be actually fraudulent.").

The District Court also dismissed the significance of Rockefeller's statements by characterizing them as concealing only helpful evidence rather than causes of action that could have been asserted. *Roeder*, 2021 WL 797807, at *10; J.A. __. But the court failed to even examine what was being alleged: the FARA

violation and Rockefeller's deceptive statements go to the heart of Count V, which alleges negligence *per se* for violating FARA:

> Chase knew or should have known that by engaging in covert foreign propaganda it would conceal material information from the United States government that was likely to affect the foreign policy decisions of the President and cause foreseeable harm . . . .

J.A. __ (AC ¶146).

Chase's illicit machinations with the Pahlavis—which were concealed and misrepresented—are also the basis for Count III, negligence *per se* predicated on a violation of the Logan Act, 18 U.S.C. § 953, J.A. __ (AC ¶ 128), and for the duty element of Counts I, VI, and IX (negligence, gross negligence, and negligent infliction of emotional distress). *See* J.A. __ (AC ¶ 116) (alleging a duty to protect U.S. diplomats arose from Chase's status as agents of the Iranian monarchy). The Hostages had none of these causes of action against Chase until they learned about Chase's scheme to defeat the Carter's Administration's foreign policies on behalf of the Shah.

2. Post-1984 Conduct

Paragraph 81 of the Amended Complaint also itemizes misleading and deceptive conduct that occurred after the statute of limitations allegedly had expired. Most notable was Reed's misleading of the FBI and Congressional investigators in 1992 and 1993. His lies resulted in Congress not discovering the

Chase sabotage efforts that prolonged the Hostages' captivity. J.A. __ (AC ¶ 81.e & f).

The District Court held that all of Chase's post-1984 cover ups were of no legal significance because the applicable statute of limitations had already expired. J.A. __ (*Roeder*, 2021 WL 797807, at *9). The District Court also refused to base any estoppel on Reed's lies to the FBI and Congress because the lies "did not conceal the elements of Plaintiffs' causes of action, as pleaded here, which involve that the Shah was a client of Chase and that Rockefeller advocated on behalf of the Shah, allegedly leading Iran both to take the hostages captive and to prolong their captivity. At best, they involve conduct—such as the extent of the pressure put on the Carter administration—that would have enhanced Plaintiffs' ability to prevail." J.A. ___ (Opinion and Order, Dkt. No 54 at 21-22).

This is a misreading of the Amended Complaint. That pleading does not contend that Chase's advocacy for the Shah is what prolonged the Hostages' captivity. The Amended Complaint instead alleges—based on the 2019 *New York Times* Article—that Reed and others actively sabotaged the Carter administration's hostage negotiations by making up and spreading falsehoods about those negotiations. This is precisely what Reed lied about when forced to give a statement before Congress. It is not a stray fact that might enhance proof at trial; it was *the* fact upon which the Hostages' "prolonging captivity" claims are based.

B. The District Court does not address the Hostages' reliance and diligence in pursuing their "prolonging captivity" claims.

Equitable estoppel requires that the plaintiff have reasonably relied on defendant's act(s) of fraud, misrepresentations and/or deception, *Zumpano*, 6 N.Y.3d at 674, and have brought the action within a reasonable period of time after the deceptions that give rise to the equitable estoppel claim "'have ceased to be operational.'" *Abbas v. Dixon*, 480 F.3d 636, 642 (2d Cir. 2007) (quoting *Doe v. Holy See (State of Vatican City)*, 17 A.D.3d 793, 794 (N.Y. App. Div. 2005)).

The District Court found that the Hostages had not proven either reasonable reliance or due diligence because a 1981 *New York Times* article contained all of the information necessary for them to have filed a timely suit against Chase for the Embassy takeover. J.A. __ (*Roeder*, 2021 WL 797807, at *12). However, this finding ignores completely the second prong of the Hostages factual allegations, *i.e.*, that the Project Eagle conspirators who acted for Chase prolonged the Hostages captivity by sabotaging the negotiations for their release. J.A. __ (AC ¶¶ 76–77). It is those allegations that give rise to the Hostages' claims for false imprisonment (Count VII), and intentional infliction of emotional distress (Count VIII), and provide independent and sufficient grounds for the negligence claims (Counts II, III, IV, V, VI, and IX). J.A. __ (AC ¶¶ 107–73).

Chase did not point the District Court to any source that even hinted at Chase's involvement in preventing an "October Surprise." In fact, the only

published sources on the topic were the House and Senate reports that exonerated Chase. *See* J.A. __ (AC ¶ 81(f)). Both the Hostages and the world first learned about Chase's successful effort to prolong the Hostages captivity in December 2019 when the *New York Times* reported on the content of the documents in the Project Eagle archive.

In short, the Hostages reasonably relied on the finding of the congressional "October Surprise" investigators. They could not have discovered what Congress and the FBI failed to discover. And once the 2019 *New York Times* Article revealed the truth, they acted with due diligence and filed suit three months later. For these reasons, the District Court's granting of the motion to dismiss should be reversed and Chase should be estopped from raising the statute of limitations as a defense.

CONCLUSION

When cover-ups succeed, their victims suffer and their perpetrators reap the rewards. The Hostages have suffered enough. Chase should not be rewarded for its cover-up's success. The Hostages had no cause of action against Chase until 2019, when the Reed papers came to light. The District Court erred on the legal standards, misread the factual allegations, made improper factual findings, and failed to distinguish between distinct claims. Under this Court's *de novo* review, the decision below should be reversed.

Dated: May 20, 2021

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit as set forth in Fed. R. App. P. 32(a)(7)(B) because this principal brief contains 10,339 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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