

23-7258

No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

APR 15 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

THEODORE CABANISS, GUARDIAN AD LITEM TO MINOR CHILD T.C.

— PETITIONER

(Your Name)

vs.

PFIZER, INC.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR NINTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

THEODORE CABANISS

(Your Name)

1563 JONATHAN ST

(Address)

VISTA, CA 92083

(City, State, Zip Code)

760-650-6505

(Phone Number)

## QUESTION PRESENTED

Does due process clause in fifth amendment to United States Constitution permit federal government to immunize medical providers from medical malpractice suits when there is *de facto*, no emergency, rather only *de jure*, or declaration of emergency promulgated by federal government.

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

## **INDEX TO APPENDICES**

- APPENDIX A:** Denial of Petition for Ninth Circuit Panel Rehearing
- APPENDIX B:** Memorandum Opinion of Ninth Circuit
- APPENDIX C:** Order of District Court, Southern District of California

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 2/9/2024.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 2/22/2024, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

United States Constitution, Fifth Amendment

## STATEMENT OF THE CASE

Minor child T.C. received inoculation for initial COVID-19 vaccine on June 7, 2021, however because of supreme negligence of its manufacturer, Pfizer (Defendant), he now suffers immune thrombocytopenic purpura (ITP).

Accordingly, T.C., through me, his father, Theodore Cabaniss, sued Defendant in California Superior Court on June 6, 2022 in San Diego. However, Defendant remanded case to Federal District Court for the Southern District of California on August 23, 2022. Next, on November 9, district court held Defendant immune from suit because pursuant to declaration by United States Department of Health and Human Services, manufacturers of COVID-19 vaccines were immune for suit.

Before T.C. sued in court, he filed request for compensation from Countermeasure Injury Compensation Program (CICP), program that provides recovery for vaccine injuries generally in form of money compensation for medical bills and time lost at work. However, CICP recovery is inadequate for cases such as T.C.'s when there is no cure. In any event, T.C. never heard back from CICP.

T.C. appealed, but Court of Appeals for Ninth Circuit affirmed and denied his petition for rehearing on February 22, 2024. Therefore, T.C. petitions this Court for writ of certiorari and requests hearing for argument that federal due process principles preclude medical malfeasors immunity under states of emergency when there is no state of emergency in fact.

T.C. was born February 12, 2008 in Eureka, California, to his mother and father. Together with them, T.C. moved to San Diego in December 2012 and although parents divorced five years later, they share custody of T.C.

Until 2021, T.C. enjoyed excellent health however after his inoculation on June 7 of that year, he got very sick and red spots popped up all over his body and he suffered extreme fatigue. On eleventh day after inoculation, T.C.'s symptoms became so serious his parents took him to emergency room and Doctor diagnosed him with ITP.

Subsequently, T.C. endured rises and falls in the intensity of ITP symptoms, including memory loss, diarrhea, bruises that heal dangerously slow, red spots caused by blood vessels that pop, and fatigue. Furthermore, brain hemorrhaging is a risk. Treatments included T.C. hooked up to machine for eight hours that provided medicine intravenously to relieve symptoms. Treatments also included drugs and steroids. Unfortunately for T.C., while treatments can relieve symptoms, ITP has no cure.

T.C. is great kid, obedient and respectful. Furthermore, from age four to thirteen T.C. excelled at Taekwondo and earned black belt in 2020. Although ITP mandates his exclusion from high contact sports, he perseveres and continues with skateboarding and surfing when his symptoms allow. However, poor memory robs him of a basic tool for academic success. Furthermore, symptoms make it a struggle for T.C. to keep good attendance at school. In spite of his symptoms and academic obstacles, T.C. desires professional career in Air Force as pilot and currently explores avenues to achieve objective. Also, T.C. wants to explore career as firefighter.



## REASONS FOR GRANTING THE PETITION

Grant of this petition means argument and decision regarding scope of federal government's continued exercise of emergency powers when there is no longer emergency.

Medical malpractice claims are creatures of state law and often turn on questions about standards of care in different localities in different states, in this case San Diego, California. Therefore, if sovereign is to immunize medical providers, such immunities must come from states themselves. However, if there is truly nationwide emergency, for example the nation in throes of pandemic, then federal government could have power to immunize medical providers if it is for good of whole nation.

However, in T.C.'s case, facts show exactly what federal Constitution does not permit. It does not permit government, or single branch of that government, to keep emergency going on paper so those emergency actions remain in effect. Such gross misapplication of federalism the federal Constitution does not allow.

For example, if after declaration of war against country, federal government interned enemy aliens for good of country, and then peace treaty ended war, then government must free those aliens because edicts that declare internment are void. It is irrelevant once peace treaty signed that a President or Military Commander does not formally revoke edict. Internees are free as a matter of our Constitution.

In this case, medical provider committed malpractice on T.C. on June 7, 2021, a time by which COVID cases had decreased and healthcare capacity increased from their woefully inadequate levels of 2020. It does not matter that federal government had for whatever reasons, kept emergency alive *de jure*. There was no emergency *de facto* and federal government's continued immunizations of liability for medical malpractice to medical providers a nullity. Any arguments about medical standards of care in San Diego on June 7, 2021 are matters of California law.

Accordingly, T.C. prays this Court grant his petitions and hear argument on his Question Presented.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Theodore Cabanis

Date: 4/15/2024