

No. -

23-7538 ORIGINAL

IN THE

**FILED**

MAY 13 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

JOSE LUIS GARCIA

— PETITIONER

(Your Name)

VS.

K. PARK

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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

**PETITION FOR WRIT OF CERTIORARI**

JOSE LUIS GARCIA

(Your Name)

P.O. BOX 705

(Address)

SOLEDAD, CALIFORNIA 93960

(City, State, Zip Code)

N/A

(Phone Number)

**QUESTION(S) PRESENTED**

Did the Court of Appeals Err in Affirming Summary Judgment When There  
Is Evidence of Deliberate Indifference of Dr. Park?

## 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

No related Cases

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	7
CONCLUSION.....	8

## INDEX TO APPENDICES

APPENDIX A Opinion of the United States court of appeals

APPENDIX B Opinion of the United States district court

APPENDIX C Medical report dated December 8, 2020

APPENDIX D X-ray Report dated December 8, 2020

APPENDIX E X-ray Report dated April 28, 2021

APPENDIX F Declaration of petitioner dated August 16, 2022

APPENDIX G Supply Receipt indicating that Dr. Park provide petitioner  
with crutches from 12-09-2020 through 12-18-2020

## TABLE OF AUTHORITIES CITED

### CASES PAGE NUMBER

Farmer v. Brennan, 511 U.S. 825, 837 (1985).....	7
Estelle v. Gamble, 429 U.S. 97, 106 (1976).....	7

### STATUTES AND RULES

United States Constitution Eighth Amendment.....	4, 8
42 U.S.C. § 1983 .....	4

### OTHER

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 A to the petition and is

reported at 2023 U.S. App. LEXIS 33207; 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 is unpublished.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 B to the petition and is

reported at 2022 U.S. Dist. LEXIS 220081; 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 December 15, 2023.

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: \_\_\_\_\_, 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 May 13, 2024 (date) on April 7, 2024 (date) in Application No. 23 A 873.

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 Eighth Amendment

42 U.S.C. § 1983

## STATEMENT OF THE CASE

Petitioner JOSE LUIS GARCIA an inmate currently incarcerated within the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR) brought this civil-rights action for damages under 42 U.S.C. § 1983 against his primary care physician Dr. K. Park for deliberate indifference to his medical needs and condition in violation of the Eighth Amendment. On December 8, 2020, while working as a volunteer worker in the kitchen during the covid 19 pandemic petitioner was injured when a heavy cart fell onto his right foot causing a severe lission. Correctional officers immediately called for medical attention, when the medical team arrived they found petitioner bleeding and a nail almost detached from his large right toe. (Appendix C.) The very same day petitioner was admitted to an outside hospital and treated with a surgery for a laceration in his right toe. An x-ray taken in the hospital on December 8, 2020 indicated that petitioner did not suffered any fracture to his bone. Nevertheless, the x-ray noted the presence of a soft tissue injury swelling in the region of the distal first metatarsal and right great toe. (Appendix D.)

For over six months following the surgery, petitioner experienced a very strong pain in his right foot and ankle, he believes that the heavy cart possibly injured a nerve or tendon in his right foot. Petitioner informed his condition to his primary care physician Dr. Park and requested that he be referred to another level of care to obtain better treatment, but Dr. Park denied his request and just prescribed to him pain medication leaving petitioner's injured foot unprotected and exposed to a damage. Petitioner alleged in his complaint that another doctor in Dr. Park's position would have treated his injury differently by making a referral to a physical therapy or by placing the injured foot in a series of cast

shoes for example. On April 28, 2021, after petitioner had made several complaints of pain in his right foot and ankle Dr. Park ordered to repeat x-rays to petitioner's right foot. The results showed a finding of an united distal tuft fracture at the first distal phalanx that was causing the pain (Appendix E.) Petitioner claims that this new fracture is the result of the lack of adequate medical care when he was at the mercy of Dr. Park who left petitioner's injured foot without protection after the surgery. Petitioner claims that Dr. Park's failure to provide adequate medical care which includes, the failure to prescribe physical therapy after the surgery, the failure to place petitioner's right foot in a series of cast shoe to prevent any damage, including the failure to make a referral to a specialist (i.e., a podiatrist) to receive adequate medical treatment, constitutes deliberate indifference under the Eighth Amendment, and resulted in a further fracture as initially predicted by prison staff.

On June 24, 2021, more than six months after the surgery, Dr. Park make a referral for physical therapy, however during the first session petitioner refused the treatment because he cannot tolerate the pain. Petitioner contends that Dr. Park should have made the referral for physical therapy at an early stage right after the surgery to prevent a further damage, no seven months late when the damage to his foot was done. Nevertheless, petitioner contends that the very fact that Dr. Park made this late referral to physical therapy this indicates that he agreed that physical therapy was necessary and part of an adequate treatment in this case, but he failed to provide this treatment on time. Finally, Dr. Park concluded providing medical care to petitioner on or about April 26, 2021. Subsequently Dr. Ashby took over as petitioner's primary care

physician. On July 15, 2021, Dr. Ashby provided to petitioner a cast shoe, while delivering the medical appliance Dr. Ashby told petitioner that this cast shoe was necessary immediately right after the surgery to prevent the damage that was already present during this examination (Appendix F), which indicates that another CDCR doctor in Dr. Park's position would have treated petitioner's condition differently.

## REASONS FOR GRANTING THE PETITION

### Did The Court of Appeals Errd In Affirming Summary Judgment When There Is Evidence of Deliberate Indifference By Dr. Park?

The standard of deliberate indifference is well established by this Court in Farmer v. Brennan, 511 U.S. 825, 837 (1985), that in relevant part states: Deliberate indifference requires a showing that the official knows and disregards an excessive risk to the inmate's health or safety. In order to be considered deliberate indifference the actions or inactions must rise to a level that are repugnant to the conscience of mankind. Estelle v. Gamble, 429 U.S. 97, 106 (1976). The portions of the legal standard identified by petitioner above clearly states that a claim of deliberate indifference is established when a defendant know in the state of his mind and despite possessing this knowledge purposefully ignore or fail to respond to a prisoner's pain and possible medical need. In the present case, petitioner contends that Dr. Park knew in his mind since the very first day when he examined him that the laceration sustained in petitioner's right foot was more than a simple laceration caused by a heavy cart. Specifically, on December 2020 Dr. Park was well aware that despite that there was not a finding of bone fracture depicted in the x-ray taken on December 8, 2020, in fact the x-rays showed a soft tissue injury/swelling in the region of the distal first metatarsal of petitioner's right toe that even a lay person would conclude it required protection to prevent a further damage. Petitioner contends that this fact alone indicates without any doubt that there was an initial injury to petitioner's inner ankle that if not treated properly by Dr. Park, obviously would result in a further fracture.

Petitioner claims that Dr. Park in fact was aware of his condition because it was available to him in petitioner's medical record.

Petitioner claims because this initial injury depicted in the first x-ray (Appendix D) was not properly treated by Dr. Park for example by providing a cast shoe to put petitioner's ankle stable or by making a referral to a specialist or physical therapy, he was injured because when he was walking without protection, all his body weight put a lot of pressure to his entire ankle, causing him imbalance and the fracture discovered by another doctor on April 28, 2021 (Appendix E.) However, on appeal Dr. Park argued that because he provided crutches to petitioner for 9 days (Appendix G) and saw him six times and prescribed pain medication, he was not deliberate indifferent. Dr. Park also argues when petitioner was under his care, there was not medical necessity for a cast shoe or series of cast shoe because the toe fracture was not discovered until after Dr. Park stopped treating petitioner.

Nevertheless, the evidence submitted here by petitioner indicates that in fact Dr. Park knew in his mind since the very first day he examined petitioner about the fracture in his inner right ankle, and he could or should have known based in his experience that leaving petitioner's injured foot unprotected for several months following the surgery obviously would cause an injury to petitioner's ankle, this is exactly what occurred here. Accordingly, petitioner contends that the Court of Appeals erred in affirming summary judgment where there was evidence of deliberate indifference by Dr. Park in violation of the Eighth Amendment.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe".

Date: May 13, 2024