

No.

24-5146

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

JUL 17 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

MIKE GARCIA

— PETITIONER

(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FIFTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

MIKE GARCIA, 11689-280

(Your Name)

MEDICAL CENTER FOR FEDERAL PRISONERS

(Address)

P.O. BOX 4000

SPRINGFIELD, MO 65801

(City, State, Zip Code)

NOVE - PRISONER

(Phone Number)

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

UNITED STATES V. AHEDO, 453 F.2d 544 (5th
AND 11th CIR. 2011) UNPUBLISHED.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	11
REASONS FOR GRANTING THE WRIT	18
CONCLUSION.....	27

INDEX TO APPENDICES

APPENDIX A	PHOTOGRAPHS OF GARCIA
APPENDIX B	OPINION, 5TH CIRCUIT COURT OF APPEALS
APPENDIX C	OPINION, WESTERN DIST. OF TEXAS
APPENDIX D	BOP POLICY 57.5300.21, SECT. 8.2
APPENDIX E	MOT. FOR REDUCTION IN SENTENCE
APPENDIX F	PAGE 29 OF MEDICAL RECORD

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

ALLEN V. MILLIGEN, 216 L. ED. 2d 60 (2023)	23
BUCKLEW V. PRECYTHE, 203 L. ED. 2d (2019)	28
ESTELLE V. GAMBLE, 429 US 97 (1976)	20, 23, 25, 26
HAMM V. SMITH, 216 L. ED. 2d 455 (2023)	28
KIMMELMAN V. MORRISON, 477 US 365 (1986)	25
MARBURY V. MADISON, 1 CRANCH 137 (1803)	22, 23, 26
TROP V. DULLES, 356 US 86 (1957)	24
UNITED STATES V. WEEMS, 217 US 349 (1910)	24

CONSTITUTION,

STATUTES AND RULES

ARTICLE VI, CL. 2, U.S. CONSTITUTION	4, 21
EIGHTH AMENDMENT, U.S. CONSTITUTION	5, 20, 23, 26
28 USC 1254	2, 6
28 USC 2106	2, 7
18 USC 3553	8, 21, 22, 28
18 USC 3582	9, 16, 19

OTHER

FEDERALIST PAPERS #78, ALEX. HAMILTON, (1787)	21, 22
MERRIAM-WEBSTER'S MEDICAL DICTIONARY, 12TH PRNTG 189, (2022)	15

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 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 MAY 07, 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: _____, 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. § 1254(1). *AND*
28 USC 2106

[] 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

GO TO NEXT PAGE

ARTICLE VI, CL 2, UNITED STATES CONSTITUTION

Cl 2. Supreme Law.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

USCONST

© 2024 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

Amendment 8 Bail—Punishment.

UNITED STATES CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

USCONST

© 2024 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

28 USC 1254

§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

USCS

© 2024 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

28 USC 2106

2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

HISTORY:

June 25, 1948, ch 646, 62 Stat. 963.

USCS

© 2024 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

§ 3553. Imposition of a sentence

(a) **Factors to be considered in imposing a sentence.** The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

§ 3582. Imposition of a sentence of imprisonment

(a) Factors to be considered in imposing a term of imprisonment. The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) [18 USCS § 3553(a)] to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of finality of judgment. Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742 [18 USCS § 3742]; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742 [18 USCS § 3742];

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) Modification of an imposed term of imprisonment. The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) [18 USCS § 3553(a)] to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

USCS

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c) [18 USCS § 3559(c)], for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g) [18 USCS § 3142];

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

USCS

© 2024 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

STATEMENT OF THE CASE

GO TO NEXT PAGE

STATEMENT OF THE CASE

APPROXIMATELY 18-YEARS AGO, PETITIONER MIKE GARCIA WAS ARRESTED AND HELD FOR TRIAL. AT THE TIME OF HIS ARREST, GARCIA WAS DIABETIC. THE DIABETES WAS CONTROLLED WITH INJECTIONS OF INSULIN.

LATER, STILL IN CUSTODY, HE WAS ISSUED HEAVY-DUTY, SAFETY-TOE WORK SHOES. GARCIA ADVISED THAT OFFICER THAT HE IS DIABETIC; AND THAT HIS DIABETES REQUIRES THAT HE WEARS "SOFT SHOES". THAT REQUEST WAS DENIED THEN AND THERE. DOCTORS GENERALLY ADVISE THOSE HAVING DIABETES OF THE IMPORTANCE OF PROPER FOOT CARE AND THE DANGERS OF ANY FOOT INFECTION.

THERE CAME A TIME WHEN GARCIA DEVELOPED A SMALL OPEN SORE ON A TOE OF HIS RIGHT FOOT; FROM THE IMPROPER SHOES HE HAD NO CHOICE BUT TO WEAR.

GARCIA REPORTED TO A NURSE. THAT NURSE VIEWED THE SMALL SORE AND TOLD GARCIA IT WAS "NOTHING." HE REMINDED THE NURSE HE IS DIABETIC. HE REQUESTED A BAND-AID TO PROTECT THE SORE FROM BECOMING INFECTED. THE NURSE REFUSED HIS REQUEST FOR A BAND-AID AND HE WAS DISMISSED; BY MS. HOSEAPPLE.

THE SMALL SORE WORSENER. HE WAS TAKEN ON A CIRCUITOUS TRIP, DURING WHICH HE WAS CONFINED IN A

SPECIAL HOUSING UNIT (SHU)*, GARCIA REMAINED IN THE SHU FOR 3 MONTHS. HIS INFECTED RIGHT LEG GREW WORSE.

GARCIA'S SUFFERING, MENTALLY AND PHYSICALLY GREW MORE INTENSE. ULTIMATELY HE ARRIVED AT THE MEDICAL CENTER FOR FEDERAL PRISONERS IN SPRINGFIELD, MISSOURI. HIS RIGHT LEG WAS BEYOND TREATMENT. HE WAS TAKEN TO A LOCAL HOSPITAL TO HAVE HIS RIGHT LEG AMPUTATED.

THAT FIRST, OF TWO, AMPUTATIONS OF HIS LEGS COULD HAVE BEEN AVOIDED WITH A SIMPLE PAIR OF PROPER SHOES, OR A BAND-AID; BOTH OF WHICH WERE INEXCUSABLY DENIED.

AFTER GARCIA'S RIGHT LEG WAS AMPUTATED HE BECAME THE VICTIM OF NIGHTMARES AND DEPRESSION. HE RECEIVED PAIN MEDICATION FOR HIS PHYSICAL PAIN; HOWEVER, NO CONCERN FOR HIS PSYCHOLOGICAL SUFFERING WAS SHOWN. HE EXPERIENCES THAT AND MORE AS OF THIS WRITING.

* STAYS IN A SINGLE-MAN SHU CELL BEAR A VARIETY OF LABELS THAT CLOAK ITS NATURE AND PUNITIVE CONFINEMENT; E.G., INVESTIGATION, SECURITY, ADMINISTRATIVE, PROTECTION, AND PUNISHMENT. THE STAY IN THE SHU WAS FURTHER DELIBERATE INDIFFERENCE. THE BOP OPERATES PLANES LARGE AND SMALL TO TRANSPORT PRISONERS. THREE MONTHS IN THE SHU, IN TRANSIT WAS INEXCUSABLE.

TIME PASSED AND GARCIA WAS ASSIGNED TO A BAD FACILITY AT MCCREARY, KENTUCKY. HE WAS STILL ENDURING THE TRAUMA OF HAVING HIS RIGHT LEG AMPUTATED. ONCE AGAIN, GARCIA WAS ISSUED IMPROPER SHOES. HE REQUESTED SHOES APPROPRIATE FOR A DIABETIC TO WEAR. HIS REQUEST WAS DENIED.

THEN, FOR A SECOND TIME, BUT NOW ON HIS LEFT FOOT, GARCIA DEVELOPED A SMALL SORE ON HIS FOOT. THIS TIME THE SORE WAS LOCATED ON THE INSTEP OF HIS LEFT FOOT. GARCIA REPORTED TO THE MEDICAL DEPARTMENT.

INITIALLY, DOCTOR WEST EXAMINED THE SORE. DR. WEST PASSED IT OFF AS "NOTHING". GARCIA HAD A FLASH BACK OF THE FIRST, SIMILAR, SUCH EXAMINATION THAT ALSO WAS A DETERMINATION THAT THE SORE ON HIS RIGHT FOOT WAS "NOTHING". HE WAS SENT ON HIS WAY. AS GARCIA DEPARTED HE ASKED THE NURSE FOR A BAND AID. THE NURSE REFUSED. DEJA VU. GARCIA'S TRAUMA EFFECTS FLAURED AS THE THOUGHTS RACED THROUGH HIS MIND OF THE AMPUTATION OF HIS RIGHT LEG. IT WAS UNNECESSARY AND MIGHT HAVE BEEN AVOIDED HAD A SIMILAR SORE BEEN PROPERLY CARED FOR. NOW THE TRAGEDY WAS BEING RELIVED WITHIN HIS MIND, OVER AND OVER AGAIN. (APPENDIX A).

A FEW WEEKS LATER GARCIA WAS BACK IN THE MEDICAL OFFICE. THE INFECTION HAD WORSENEED. A BANDAGE ON THAT FOOT WAS BEING CHANGED. THE NURSE LEFT THE ROOM. THE

DOCTOR ENTERED THE ROOM BUT QUICKLY EXITED UPON ENCOUNTERING THE STENCH OF GARCIA'S FLESH. HE WAS PUT THROUGH THE SAME TORTUOUS 3 MONTHS OF AGONY BEFORE HE FINALLY REACHED SPRINGFIELD MEDICAL CENTER AGAIN. THREE MORE MONTHS IN A SHU CELL.

HE WAS IN SUCH MENTAL ANGUISH, PHYSICAL PAIN, AND A PERSONAL STATE OF HOPELESSNESS THAT HE WAS AT A POINT AT WHICH DEATH WOULD HAVE BEEN WELCOMED. YET, THOUGHTS OF HIS LOVING FAMILY SUSTAINED HIM.

THE STAFF AT THE SPRINGFIELD MEDICAL CENTER WERE UNABLE TO SAVE HIS BADLY INFECTED LEFT LEG. HIS LEFT LEG WAS AMPUTATED. AFTER THE AMPUTATION OF HIS LEFT LEG THE INFECTION PERSISTED. GARCIA UNDERWENT MULTIPLE DEBRIDEMENTS OF ADDITIONAL INFECTED FLESH THAT WAS DISCOVERED, AFTER THE AMPUTATION OF HIS LEFT LEG.

GARCIA SUFFERS MULTIPLE SERIOUS MALADIES; AMONG THEM IS SURGERY TO HIS LEFT SHOULDER. ON NOVEMBER 19, 2023 HE WAS ADMITTED TO THE HOSPITAL TO HAVE THAT OPERATION PERFORMED. AFTER A BRIEF HOSPITAL STAY HE

* A DEBRIDEMENT IS THE SURGICAL REMOVAL OF CONTAMINATED TISSUE. MERRIAM-WEBSTER'S MEDICAL DICTIONARY, 12TH EDITION, 189 (2022).

WAS RETURNED TO THE MEDICAL CENTER. HIS SHOULDER JOINT HAD BEEN REPLACED.* HIS LEFT ARM WAS SUPPORTED BY A SUBSTANTIAL, MODERN, SLING.

ALL DID NOT GO WELL; AT THE MEDICAL CENTER HE DEVELOPED A SERIOUS INFECTION. HE WAS RECEIVING ANTI-BIOTICS BUT THE INFECTION PERSISTED. ON FEBRUARY 26, 2024 HE WAS RE-ADMITTED TO THE HOSPITAL. WHATEVER HAD BEEN PREVIOUSLY DONE TO HIS SHOULDER WAS UNDONE. HE WAS RETURNED TO THE MEDICAL CENTER. GRADUALLY THE INFECTION DIMINISHED UNTIL IT WAS CURED.

ON JUNE 7, 2024 GARCIA WAS AGAIN ADMITTED TO THE HOSPITAL. WHAT HAD BEEN REMOVED FROM HIS SHOULDER FEBRUARY 26, 2024 WAS SURGICALLY REPLACED. HIS LEFT ARM IS SUPPORTED IN ANOTHER VERY STURDY SLING.

GARCIA'S CONDENSED MEDICAL RECORD IS PROVIDED AS APPENDIX D. IT DOES NOT INCLUDE AN ACCOUNT OF THE RECENT SHOULDER HISTORY. GARCIA HAS OTHER SERIOUS MEDICAL ISSUES; HOWEVER, WHEN HE FIRST APPLIED TO THE DISTRICT COURT FOR A REDUCTION IN SENTENCE (18 USC 3582) HE FOCUSED ON ONE ISSUE COMPRISED OF THE MENTAL

* HE IS RELYING ON WHAT WAS TOLD TO HIM, NOT HIS KNOWLEDGE.

TORTURE HE LIVES WITH EACH DAY AND NIGHT THAT STEMS FROM THE DELIBERATE INDIFFERENCE OF MEMBERS OF MEDICAL PERSONNEL AT TWO DISTINCT BOP INSTITUTIONS.

IF GARCIA HAD BEEN ISSUED PROPER SHOES, APPROPRIATE FOR A DIABETIC, AND HAD HE RECEIVED A SIMPLE BAND-AID TO PROTECT A MINOR SORE FIRST ON HIS RIGHT FOOT AND THEN SIMILARLY ON HIS LEFT FOOT, PROMPTLY, THE YEARS OF MENTAL ANGUISH HE HAS UNNECESSARILY ENDURED, AND THE COUNTLESS ONES THAT LIE AHEAD OF HIM COULD HAVE BEEN AVOIDED.

GARCIA KNEW NOTHING OF TRAUMA BEFORE THE RIGHT LEG WAS AMPUTATED. UNFORTUNATELY, AFTER THESE MANY YEARS OF SUFFERING, HE HAS COME TO KNOW MUCH OF IT FROM PERSONAL EXPERIENCE. IN HIS SUPPLEMENT, GARCIA COVERS PTSD AND ITS TORTURE THAT IS THE RESULT OF GETTING PROFESSIONAL ASSISTANCE TOO LATE OR, AS IN GARCIA'S CASE NONE WHATSOEVER, FOR MANY YEARS. *

* DURING GARCIA'S MOST RECENT HOSPITALIZATION, JUNE 27, 2024, (APP. F), A DOCTOR SAID GARCIA HAS MRSA IN HIS LUNGS AND MAY HAVE REPETITIOUS BOUTS WITH PNEUMONIA IN THE FUTURE.

REASONS FOR GRANTING THE PETITION

Go to NEXT PAGE

REASONS FOR GRANTING THE PETITION

GOOD NEWS MEANS MANY THINGS TO MANY PEOPLE, BUT GOOD NEWS TO PETITIONER MIKE GARCIA MEANS WAKING ONE DAY TO DISCOVER HE HAS HAD A BAD DREAM. IT WOULD MEAN BEING ABLE TO REACH DOWN TO TOUCH HIS TOES, HIS LEGS AND FIND THEM INTACT. IT WOULD MEAN PUTTING ON A PAIR OF FASHIONABLE SHOES IN WHICH TO DANCE WITH HIS WIFE OF 41-YEARS

GARCIA, HOWEVER, IS FULLY AWARE THAT THE UNNECESSARY AMPUTATIONS OF BOTH HIS RIGHT AND LEFT LEGS DID NOT OCCUR IN A DREAM. HE DOES LIVE THROUGH REPETITIOUS NIGHTMARES OF GHAULISH SURGEONS GLEEFULLY SAWING HIS LEGS. HE IS A LIVE EXAMPLE OF DELIBERATE INDIFFERENCE BY MEDICAL PROFESSIONALS. THAT INDIFFERENCE (TWICE OVER) HAS TURNED HIS LIFE INTO A DAILY EPISODE OF MENTAL TORTURE AND PHYSICAL PAIN. (APP. A)

IN 2018, THE FIRST STEP ACT OFFERED GARCIA A GLIMMER OF HOPE. THE ACT MODIFIED 18 USC 3582 MAKING IT POSSIBLE FOR PRISONERS TO PETITION FOR "COMPASSIONATE RELEASE." * BY THAT TIME, GARCIA WAS EXPERIENCING

* THE BOP USES REDUCTION IN SENTENCE (RIS) INTERCHANGEABLY WITH COMPASSIONATE RELEASE.

ALMOST CONSTANT PSYCHOLOGICAL TORTURE (APP. D, P. 3).

APPENDIX D ANNOUNCES, FEB. 18, 2002, THAT THE BOP HAS ASSEMBLED A TEAM TRAINED IN PTSD FOR EMPLOYEES (AND CERTAIN FAMILY MEMBERS). THE BOP HAS NOT ASSEMBLED A CORRESPONDING TEAM TRAINED IN PTSD TO DEAL WITH TRAUMATIC EVENTS PRISONERS EXPERIENCE (APP. D, PAR. 4).

THE FIRST SENTENCE OF THE SUPREME COURT'S HOLDING IN *ESTELLE V. GAMBLE*, 429 US 97, 97S.07.285, 50 L.ED.2D 251 (1976) STATES:

"DELIBERATE INDIFFERENCE BY PRISON PERSONNEL TO A PRISONER'S SERIOUS ILLNESS OR INJURY CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT CONTRAVENING THE EIGHTH AMENDMENT."

THE COURT SAID IN ITS OPINION:

"AN INMATE MUST RELY ON PRISON AUTHORITIES TO TREAT HIS MEDICAL NEEDS; IF AUTHORITIES FAIL TO DO SO, THOSE NEEDS WILL NOT BE MET." *ESTELLE*, SUPRA, 429 US AT 103.

GARCIA BROUGHT A SINGLE ISSUE TO THE DISTRICT COURT, THE EIGHTH AMENDMENT QUESTION. THE COURT

FAILED TO ACKNOWLEDGE THAT QUESTION (APP. C), THE JUDGE DIVERGED ON A STATUTE INSTEAD, 18 USC 3553.

"A CONSTITUTION IS, IN FACT, AND MUST BE REGARDED BY THE JUDGES, AS FUNDAMENTAL LAW. IT THEREFORE BELONGS TO THEM TO ASCERTAIN ITS MEANING, AS WELL AS THE MEANING OF ANY PARTICULAR PROCEEDING FROM THE LEGISLATIVE BODY. IF THERE SHOULD HAPPEN TO BE AN IRRECONCILABLE VARIANCE BETWEEN THE TWO, THAT WHICH HAS THE SUPERIOR OBLIGATION AND VALIDITY OUGHT, OF COURSE, TO BE PREFERRED; OR IN OTHER WORDS, THE CONSTITUTION OUGHT TO BE PREFERRED TO THE STATUTE, THE INTENTION OF THE PEOPLE TO THE INTENTION OF THEIR AGENTS." THE FEDERALIST PAPERS, NO. 78, COVENTRY HOUSE PUBLISHING, 382 (2015), ALEXANDER HAMILTON (1787).

THE CONSTITUTION WAS RATIFIED ON MARCH 4, 1789. THE CONSTITUTION, AS THE FRAMERS DECLARED IN ARTICLE VI, CLAUSE 2, BECAME THE "LAW OF THE LAND". WHEN PUSH CAME TO SHOVE, THE CONSTITUTION ALWAYS RULED.

IN 1803, CHIEF JUSTICE JOHN MARSHALL DELIVERED AN HISTORY MAKING OPINION THAT WAS VERY CLOSELY ALIGNED WITH THE WORDS OF ALEXANDER HAMILTON IN FEDERALIST 78, AS CITED IN PART, ABOVE.

"SO IF THE LAW BE IN OPPOSITION TO THE CONSTITUTION;
IF BOTH THE LAW AND THE CONSTITUTION APPLY TO A
PARTICULAR CASE, SO THAT THE COURT MUST EITHER
DECIDE THAT CASE CONFORMABLY TO THE LAW
DISREGARDING THE CONSTITUTION; OR CONFORMABLY
TO THE CONSTITUTION DISREGARDING THE LAW, THE
THE COURT MUST DETERMINE WHICH OF THESE
CONFLICTING RULES GOVERNS THE CASE, THIS^{IS} THE
VERY ESSENCE OF JUDICIAL DUTY.

IF THEN, THE COURTS ARE TO REGARD THE
CONSTITUTION, AND THE CONSTITUTION IS SUPERIOR
TO ANY ORDINARY ACT OF THE LEGISLATURE, THE
CONSTITUTION AND NOT SUCH ORDINARY LAW, MUST
GOVERN THE CASE TO WHICH THEY BOTH APPLY."

MARBURY V. MADISON, 1 CRANCH 137, 178, 2 L ED.
60 (1803).

IT IS IMPORTANT TO MAKE AN IMPORTANT OBSERVATION
AT THIS POINT. GARCIA STRESSES THAT HE IS NOT
QUESTIONING THE CONSTITUTIONALITY OF § 3553. THE
ISSUE IS STRAIGHT FORWARD. ALEXANDER HAMILTON
SAID IT IN FEDERALIST #78, "... THE CONSTITUTION
OUGHT TO BE PREFERRED TO THE STATUTE..." IN
MARBURY, SUPRA, CHIEF JUSTICE JOHN MARSHALL SAID,
"THE CONSTITUTION AND NOT SUCH ORDINARY LAW, MUST
GOVERN THE CASE TO WHICH THEY BOTH APPLY."

THIS COURT RECENTLY CONFIRMED THAT:

"THE CONSTITUTION IS SUPREME OVER STATUTES,
NOT VICE VERSA. *MARBURY V. MADISON*, 5 U.S. 137,
1 CRANCH 137, 178, 2 L.ED. 60 (1803). " *ALLEN V.*
MILLIGAN, 599 U.S. , 143 S.Ct. , 216 L.ED. 2d 60,
114 (2023).

AS GARCIA HAS SAID, HE RAISED ONE ISSUE IN HIS
PLEA FOR COMPASSIONATE RELEASE (RIS), I.E., CRUEL
AND UNUSUAL PUNISHMENT, PURSUANT TO AMENDMENT
EIGHT.

"THOSE ELEMENTARY PRINCIPLES ESTABLISH THE GOVERN-
MENT'S OBLIGATION TO PROVIDE MEDICAL CARE FOR THOSE
WHOM IT IS PUNISHING BY INCARCERATION. AN INMATE MUST
RELY ON PRISON AUTHORITIES TO TREAT HIS MEDICAL NEEDS; IF
THE AUTHORITIES FAIL TO DO SO, THOSE NEEDS WILL NOT BE
MET. IN THE WORST CASES SUCH A FAILURE MAY ACTUALLY
PRODUCE PHYSICAL "TORTURE OR A LINGERING DEATH," IN RE
KEMMLER, SUPRA, THE EVILS OF MOST IMMEDIATE CONCERN
TO THE DRAFTERS OF THE AMENDMENT. IN LESS SERIOUS
CASES DENIAL OF MEDICAL CARE MAY RESULT IN PAIN AND
SUFFERING WHICH NO ONE SUGGESTS WOULD SERVE ANY
PENALOGICAL PURPOSE." *ESTELLE*, SUPRA, 429 U.S. AT 103.

"THE EXACT SCOPE OF THE CONSTITUTIONAL PHRASE 'CRUEL AND UNUSUAL' HAS NOT BEEN DETAILED BY THIS COURT. BUT THE BASIC POLICY REFLECTED IN THESE WORDS IS FIRMLY ESTABLISHED IN THE ANGLO-AMERICAN TRADITION OF CRIMINAL JUSTICE. THE PHRASE IN OUR CONSTITUTION WAS TAKEN DIRECTLY FROM THE ENGLISH DECLARATION OF RIGHTS OF 1688, AND THE PRINCIPLE IT REPRESENTS CAN BE TRACED BACK TO THE MAGNA CARTA. THE BASIC CONCEPT UNDERLYING THE EIGHTH AMENDMENT IS NOTHING LESS THAN THE DIGNITY OF MAN. WHILE THE STATE HAS THE POWER TO PUNISH, THE AMENDMENT STANDS TO ASSURE THAT THIS POWER IS EXERCISED WITHIN THE LIMITS OF CIVILIZED STANDARDS,"
TROP V. DULLES, 356 US 86, 99-100, 78 S. CT 590, 2 L. ED 2D 630 (1957).

THIS COURT WEEMS IN 1910, THE COURT POINTED OUT:

"HE MUST BEAR A CHAIN NIGHT AND DAY." WEEMS V. UNITED STATES, 217 US 349, 366, 54 L. ED 793 (1910).

GARCIA WOULD GLADLY WEAR WEEMS CHAINS FOR 12 YEARS IF HE COULD ONLY HAVE HIS LEGS TO PUT THEM ON.

GARCIA HAS FOCUSED ON THE DELIBERATE INDIFFERENCE THAT CULMINATED IN THE LOSS OF BOTH OF HIS LEGS,

HOWEVER, HIS OTHER MEDICAL ISSUES ARE NOT ADDRESSED IN THIS PLEADING, BUT, NONE THE LESS, SERIOUS. ON JUNE 06, 2017 A DOCTOR KATHERINE MOUSER MADE THE ENTRY BELOW IN GARCIA'S MEDICAL RECORD. A RELEASE IS INCLUDED HEREWITH SO THE RECORD MAY BE REQUESTED.

"COUNSELED WOUND CARE, PRESCRIBED SHOR AND PROGNOSIS, RISKING LOSS OF LEFT LEG DUE TO NON-COMPLIANCE." DR. KATHERINE MOUSER, (APPX. F)

THE BOP WAS AWARE OF THE DANGERS AND RISK. SEE ESTELLE, SUPRA, 429 US AT 103.

"THE CONSTITUTION PROTECTS THE RIGHTS OF ALL DEFENDANTS, THE INNOCENT AND GUILTY ALIKE." KIMMELMAN V. MORRISON, 477 US 365, 380, 106 S. CT. 2574, 91 L. ED 2D 305 (1986).

APPENDIX A, MAKES GARCIA'S CASE IN THIS MATTER. IT DOES NOT REQUIRE SPECIAL TALENT TO VIEW THE MAN GARCIA WAS ON JANUARY 30, 2011 AND BE SHOCKED AT THE GARCIA OF 2024 WHO LIVES IN AGONY FOR ONE REASON; THE DELIBERATE INDIFFERENCE OF BOP EMPLOYEES WHOSE MEDICAL TRAINING SURGLY TAUGHT THEM NOT TO TREAT SUCH NEEDS, AS SIMPLE AS A BANDAID, LIGHTLY. DR. MOUSER, CRITICIZED THE

"NON-COMPLIANCE" IN THE MEDICAL NEEDED FOR GARCIA'S LEFT LEG. THE DOCTOR WARNED THAT NON-COMPLIANCE [WITH HER INSTRUCTIONS] WAS "RISKING" LOSS OF LEFT LEG. THAT IS DELIBERATE INDIFFERENCE.

WHOSE NON-COMPLIANCE? IT IS NOT GARCIA'S, HE DOES NOT CONTROL HIS MEDICAL CARE. SEE ESTELL, SUPRA, 429 US AT 103. OBVIOUSLY SHE IS ADDRESSING BOP MEDICAL STAFF. (APP. F).

"THE VERY ESSENCE OF LAW CERTAINLY CONSISTS IN THE RIGHT OF EVERY INDIVIDUAL TO CLAIM THE PROTECTION OF THE LAWS WHENEVER HE RECEIVES AN INJURY."
MARBURY, SUPRA, 1 CRANCH AT 163.

IN MARBURY THE COURT SPOKE OF THE "RIGHT OF EVERY INDIVIDUAL." IN KIMMELMAN, SUPRA, THE COURT USED THE PHRASE "RIGHTS OF ALL DEFENDANTS". NO WHERE DOES IT SAY EXCEPT MIKE GARCIA

THE EIGHTH AMENDMENT PROTECTS MIKE GARCIA AND IT OUGHT NOT TO HAVE BEEN IGNORED BY THE LOWER COURTS. GARCIA LOST BOTH LEGS AND SUFFERS THE PAIN OF UNTREATED PTSD BECAUSE SOME INDIVIDUALS IGNORED THE LAW. THAT IS DELIBERATE INDIFFERENCE.

CONCLUSION

PETITIONER GARCIA WILL LIVE THE REMAINDER OF HIS LIFE, CRIPPLED; HE HAS NO LEGS. HE WILL BE TORTURED, LIFE-LONG KNOWING HIS LEGS WOULD BE INTACT BUT FOR THE DELIBERATE INDIFFERENCE TO THE RISKS OF NOT DRESSING THOSE 2 SORES. THEY WERE DELIBERATELY INDIFFERENT WHEN THEY REFUSED A BAND-AID TWO TIMES. EVEN THE DOCTOR'S ORDERS WERE NOT FULFILLED (APP.F)

GARCIA WAS LOCKED IN THE SHU FOR 3 MONTHS; IN A DIRTY CELL AWAITING MEDICAL ATTENTION FOR HIS RIGHT LEG, PRIOR TO AMPUTATION. ON THE OCCASION OF THE INFECTION OF HIS LEFT LEG, HE WAITED 3 MONTHS IN THE SHU, AGAIN IN A DIRTY CELL. ON EACH OF THOSE OCCASIONS HE WAS ALREADY SUFFERING SERIOUS LEG INFECTIONS. ONE MUST WONDER IF THOSE FILTHY CONDITIONS MAY HAVE CONTRIBUTED TO THE LEG INFECTIONS HE WAS ON HIS WAY TO HAVE TREATED. SUCH TREATMENT IS UNDENIABLY DELIBERATE INDIFFERENCE.

GARCIA IS A SHADOW OF THE PERSON HE WAS (APP.A). HE HAS SUFFERED PSYCHOLOGICALLY FOR YEARS. HE HAS SUFFERED THE TRAUMA OF LONELY ISOLATION ANTICIPATING THE AMPUTATION OF FIRST ONE LEG, AND IN TIME THE ONE REMAINING LEG. HE SUFFERS THE SYMPTOMS OF PTSD. DELIBERATE INDIFFERENCE VIOLATES THE EIGHTH AMENDMENT

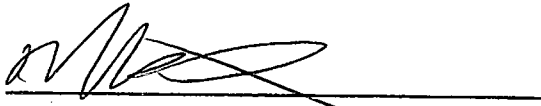
"THE EIGHTH AMENDMENT IS THE SUPREME LAW OF THE LAND..."
HAMM V. SMITH, 216 L. ED2D 455 (2023), JUSTICE THOMAS WITH
WHOM JUSTICE ALITO JOINS DISSENTING; QUOTING BUCKLEUP V.
PREECHIE, 587 US , 139 S. CT. , 203 L. ED2D 521 (2019).

THE LOWER COURTS IGNORED THE EIGHTH AMENDMENT ISSUE
AND DIVERTED THE ATTENTION TO 18 USC 3553. COURTS MAY NOT
TURN THE CONSTITUTION ON OR OFF AT WILL, UNDER 28 USC 2106
THIS COURT MAY DO WHAT IS JUST UNDER THE CIRCUMSTANCES.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: JULY 16 2024