

QUESTION(S) PRESENTED

I WHETHER THE SIXTH CIRCUIT COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE DECISION OF ITS COURT ON THE SAME IMPORTANT MATTER

II WHETHER THE DISTRICT COURT DECISION CONFLICTS WITH THE SIXTH CIRCUIT COURT

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

Johnson v Austin, 2023 U.S. Dist. LEXIS 212318
Eastern District

TABLE OF AUTHORITIES CITED

CASES

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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 _____; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 See Case No. 23-2080.

☐ 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: October 21, 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

The Eighth Amendment to the United States Constitution provides in relevant part: "Nor cruel and unusual punishment inflicted."

STATEMENT OF THE CASE

Petitioner asserts that the district court erred in holding that, under the objective prong, his back pain was not a serious medical need as a matter of law. Johnson asserted in his complaint and states that he was in extreme pain due to his chronic back condition and the defendants ignored his complaint causing him to fall and collapse from the top of the back causing him to further injuries and pain and wanton unnecessary infliction of pain continuously. See also Johnson v Austin, 2023 U.S. Dist LEXIS 212318 at [*17] - [*17]

Petitioner requested a extension on his bottom back detail but was denied by Physician Assistant (PA) Austin, which denied Petitioner a reasonable requests for medical treatment in the face of an obvious need for such attention where Johnson is thereby exposed to undue suffering, on the threat of tensible residual injury.

The District Court failed to assume the truth of Johnson and granted summary judgment in the defendants favor despite in the light most favorable to Johnson he has shown that there is a genuine issue of material fact on the objective prong, and subjective prong of his deliberate indifference claim.

Johnson timely appealed to the sixth circuit who affirmed the district court error and then denied Johnson Petition for rehearings and/or Rehearing En Banc

REASONS FOR GRANTING THE PETITION

The District Court, and Sixth Circuit Court of Appeal decision conflicts with the United States Supreme Court and Sixth Circuit Court of Appeals holdings. Rule 10 (a), (c).

Pursuant to Federal rules of civil procedure 56, the Court will grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. (a) In determining whether a genuine issue of material fact exists, the Court assumes the truth of the non-moving party's evidence and construes all reasonable inferences from that evidence in the light most favorable to the non-moving party. See *Cimino v. Streicher*, 434 F.3d 461, 464 (6th Cir. 2005).


Johnson has provided evidence of medical records showing that he has a serious medical need or chronic back condition that causes him to fall and collapse which the defendants were aware of or failed to provide any treatment, care, and/or accommodations for such as bottom bunk detail. See *Johnson v. Austin*, 2023 U.S. Dist. LEXIS 212318 at [72] - [73], which is contrary to the Sixth Circuit decision in *Murphy v. Greiner*, 406 Fed Appx 972 (Murphy claims that the district court erred in holding that, under the objective prongs, his back pain was not a serious medical need as a matter of law. Murphy alleges in his Complaint Complaints for further five days. Under *Estelle* which also involved inadequate treatment of back injuries, 429 U.S. at 99,

Murphy presented sufficient evidence of an objective
serious medical condition to survive summary judgment;
Westlake v Lucas, 539 F.3d 857 at [860] (we believe
that a prisoner states a proper cause of action when he
alleges that prison authorities have denied reasonable
requests for medical treatment in the face of an
obvious need for such attention where the inmate is
thereby exposed for undue suffering or the threat of
tangible residual injury), which the district court
granted and still denied Johnson's complaint and granting summary
judgment for the defendants. See Johnson v Austin, 2023
U.S. Dist. LEXIS 212318 at [117] (while true that not
all back pain qualifies as a serious medical need, the
law is clear that sufficient evidence of "extreme pain due
to [a] back condition" or back injury" can constitute
an "objectively serious medical condition to survive summary
judgment" and an Eighth Amendment claim. See, e.g., Murphy
v Grunewald, 466 F. App'x 972, 975 (6th Cir. 2011) ("Under
Estelle [v. Gamble], 429 U.S. 97, 97 S.Ct. 2851 L. Ed. 2d 251
(1976)"); Johnson supra at [125] (In his complaint,
Johnson alleges that on October 24, 2021, Austin
and Stricklin were deliberately indifferent to his
"serious medical need or chronic back pain"); Johnson
supra at [167] (As an initial matter, the parties
dispute whether Johnson's chronic [117] back
condition constituted a "serious medical need", which
shows the decision was contrary and conflict with the
Sixth Circuit decisions and holdings in Estelle, and also
shows that the court did not assume the
truth in the light of the evidence for Johnson.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 12 / 21 / 24